18A1187

U.S. SUPREME COURT

Michael A. Young
V.
Vernon Oliver Et. Al.

Case No.
18-8223
May 3rd, 2019

~~IMMEDIATE RULE 44 PETITION FOR REHEARING AN~~ EMERGENCY RULE 16.3 SUSPENSION OF CERTITORARI DENIAL

HERE... Comes GOOD FAITH petitioner NOT for DELAY but in FAIR business EFFORTS seeking REHEARING set forth by RULE 44, under extraordinary intervening circumstances of substantial controlling EFFECT, an OTHER substantial grounds NOT PROPERLY presented, BOTH are MY RULE 44.2 provisional ENTITLEMENTS... MORE... SO... Several subsequent RULE 29.2 TIMELY mail pleadings INVOKING the JOINT review RULE 12.4 provisional ENTITLEMENT has controlling EFFECT enabling EMERGENCY suspension of certiorari DENIAL set forth by RULE 16.3 provisional SAFE GATE application!!! In support thereof as follows...

1. BRIEFLY... On 1-9-19 Case No. 18-7321 seeking JOINT review ENTITLEMENT was docketed... Then MY LEGAL call SCOTT S. HARRIS direct CONTACT instructing MY JOINT review ENTITLEMENT petition was subsequently Case ANALYST LEVITAN 2-15-19 REJECTED... Where upon MY eliminated JOINT review the SECOND a singular ENTITLEMENT was FINALLY 3-1-19 LEVITAN docketed at No. 18-8223. With MY THIRD seeking JOINT review ENTITLEMENT once AGAIN case ANALYST LEVITAN sent BACK on 3-8-19 in BAD FAITH pre-organize REJECTION... SO... Upon reiterating MY COMPETENTLY written RULE 12.4 provisional articulation AGAIN seeking

"JOINT" review "ENTITLEMENT" was "MY" 3-13-19 "RESUBMISSION" along with "MY TIMELY" mail "RULE 29.2" motion No. 18-7321 filing for "EMERGENCY" declaration under "RULE 36" to "RELEASE" pending "FINALITY"... Followed by "YET" another "MY GOOD FAITH" 3-20-19 "TIMELY" mail "RULE 29.2" resubmissions!!!

2. "NOW"... In "BAD FAITH" under pre-organize inapplicable deliberate "BY PASS" of "MY JOINT" review controlling "EFFECT", a premature "ORDER" was "ENTERED" on 3-18-19 by Clerk "HARRIS" in No. 18-7321 "DENYING" Writ of Certitorari... "AN"... With intentional "RULE OF EVIL" deliberate "BY PASS" of "OTHER" substainable grounds "NOT" previously "PROPERLY" presented to constitutional "AUTHORITY" of "TRUTH BADER GINSBURG" under "GREAT HONORABLE" 28 U.S.C § 2106 to "TAKE" expeditious "CORRECTIVE ACTION"... [ATTACH #1]... "YES"... In "ALL" pre-organize further "CORPORATE" sustain of "MY ACTUAL INJURY"!!!

3. "MOREOVER"... Immediately "MY TWO" 3-22-19 and 3-27-19 "TIMELY" mail "RULE 29.2" petition filings under "RULE 44" "REHEARING", an "SUSPENSION" of "DENIAL" provisional "SAFE GATE" for "RULE 16.3" controlling "EFFECTS" were once "AGAIN" applied to No. 18-7321 case... "BUT"... On 3-26-19 here "AGAIN" in "LEVITAN" pre-organize "BAD FAITH" of Clerk "HARRIS" name "YET" another "IMPROPER" rejection of "MY" 3-20-19 "EMERGENCY RULE 36" resubmission. Followed by 3-27-19 "REJECTION" of "MY FIRST" 3-13-19 "EMERGENCY RULE 36" application, an "BOTH" return letters of inapplicable instructive "FRAUD" written in misguided "LIE" an "DECEIT" with intentional manipulation of "MY ACCURATE RECORD". [ATTACH #2]... As eventhough "MY GOOD FAITH" "filings" "BOTH" included "MY" "THIRD" seeking "JOINT" review "ENTITLEMENT" petition, "BOTH" times in "BAD FAITH" rejection with "NO DATED" acknowledgement "STAMP", yup here "MY COMPETENTLY" compliant petitions were "RETURNED" undocketed... "NOW"... "IMPORTANT NOTE"... Indisputable obvious "COLLUSION" with "JOHN M. NEWSON" at "BEDROCK" GA 19 in Tolland County "CODE" of "SECRET" judicial "CORRUPT" misconduct, yes "HE DISHONORABLE" defendant in 18-8765 pending "HERE" in U.S. "SUPREME" Court "AUTHORITY". [ATTACH #3] !!!

4. Nevertheless, upon "MY" 3-29-19 "THIRD" petition re-file "FINALLY" accepted on 4-9-19 "ANALYST LEVITAN" placed on docket as No. 18-8765... "AN"... "NOW"... With "MY THIRD" 3-29-19 "EMERGENCY RULE 36" and "BOTH" 3-22-19 with 3-27-19 petitions for "RULE 44" REHEARING pending in No. 18-7321 "MY LEGAL" call [D.D.C.] "DENIED" contact was momentarily "SUSPENDED"... "SO"... In "COLLUSION" on 4-16-19 "MY CAPTORS" pre-organize meaningless "LEGAL" call contact "HERE" with "MARA SILVER", who "DENIED" further "MEANINGFUL" Court "ACCESS" by providing 4-26-19 "STAGED" confrence date immediately directing "ME" to case "ANALYST LEVITAN" voice "BOX" eliminating "MY LEGAL" call "DIRECT" contact... "MORE"... "SO"... She eliminated "MY" pending "THIRD" 3-29-19 attempted "EMERGENCY RULE 36" by "HER" pre-organize "BAD FAITH" Clerk "HARRIS" named "BOYCOTT" rejection with "NO DATED" acknowledgement "STAMP"... "YES"... With pre-dated 3-10-19 "RETURN" letter of "FRAUD" sent 3-16-19 pm, written in misguided "LIE" an "DECEIT" with intentional "RULE 23.3" inapplicable instructive citation!!! [ATTACH # 4] !!!

5. Anyways, with "NO CALL BACK" as 4-16-19 "REQUESTED" in "RESPONSE", on 4-19-19 "MY GOOD FAITH" attempted "LEGAL" call "EFFORTS" were "DENIED" by "MY CAPTORS" with "NO" written "RETURN" in "RESPONSE". [ATTACH # 5]... "AN"... Here dated 4-23-19 "MY SECOND" with "MY THIRD" dated 4-26-19 "BOTH" again deliberately "DENIED" with "EFFECTIVE" written "RESPONSES" clearly "PLAGUED" in "LIE" an "DECEIT" manipulating the "ACCURATE RECORD". [ATTACH # 6]...

6. "HERE"... Indisputable "VERIFIED" constitutional "PROOF" of "MY FOURTH" mail "RULE 29.2" "TIMELY" 3-22-19 "EMERGENCY RULE 36" application, through "MORE" of "MY CAPTORS" intentional misguided "LIES" of "DECEIT" presumably "MISSING" in "COMBAT", deliberately written "INTENT" manipulating "MY ACCURATE RECORD"... "YES"... Commencing "MY FIFTH" 3-25-19 application, of course "TIMELY" in "GOOD FAITH" indisputable "FAIR" business "EFFORTS". [ATTACH #] !!!

7. "NOW"..In "SPITE" with "EVIDENT" corporate "SCOTT S. HARRIS" an "CORRUPT" others in "COLLUSION" simultaneous "BAD FAITH" 3-29-19 "ORDERS" of 18-7321/18-8223 "DENIALS" were "PREMATURELY" entered. [ATTACH #3]..."YA"...With "NO" ruling "PROPERLY" executed on "MY" EMERGENCY RULE 36" applications, nor "MY JOINT" review "ENTITLEMENTS", moreso is another "SERIOUS" fundamental "SEVERE" structural "ERROR" in "VIOLATION" of "MY EQUAL" protection "GURANTEED" enjoyment "RIGHTS"..."AN"..Totality of "THIS" factual "PATTERN" firmly holds "LAW OF CASE", which has substantial controlling "EFFECT" under "MY RULE 44.2" provisional "ENTITLEMENTS", for "SUSPENSION" of "DENIALS" set forth by "RULE 16.3" enabled "SAFE GATE" pending "MY PROPER" applicable "RULE 12.4" in "JOINT" review provisional "ENTITLEMENTS" !!!

Wherefore under "MY COMPETENTLY" articulated compliant "SHOWING" petitioner explicitly request "EMERGENCY" constitutional "AUTHORITY", in "SUPREME" Court "ORDER" of immediate "SUSPENSIONS" of "BOTH" 18-7321 certiorari and "REHEARING" with 18-8223 certiorari "DENIALS"..."AN"... With "NO", yes, "NO FURTHER" deliberate "BY PASS" doctrine expedite "MY EMERGENCY RULE 36" applications to this "HONORABLE" Court "SUPREME CHIEF" Justice "TRUTH BADER GINSBURG"..."YES...RIGHTS NOW"..Pending "FINALITY" of this "EMERGENCY" application/petitions "REHEARING" in "JOINT" review "RULE 12.4" provisional controlling "EFFECTS", as "BOTH" are "MY ENTITLEMENTS" under "EQUAL" protection, "DUE Process "CLAUSES" of "OUR" U.S. Constitution, in "INTEREST" of "JUSTICE" for "ALL" the "PEOPLE" in "UNITED STATES" of "AMERICA" !!!

Explicitly Submitted
by MY "Factual Innocence" !!!
Michael A. Young Petitioner

The "SOLE FORCES" of "SPECIAL SECRET" intelligence eliminating "ALL" forums of malicious "LAW" !!!

Declaration Under 18 U.S.C. §1621 | 28 U.S.C. § 1746

I, Michael A. Young declare in "TRUTH" affidavit process, certified under penalty of "PERJURY" the information in this forgoing is "TRUE" and "ACCURATE" to the "BEST" of "MY" knowledgeable intelligence an "CAN" "ONLY" be "REBUTED" by "SAME" in "RESPONSE" thereto. Filed under "SUPREME" Court "RULE 29.2" procedure for the benefit of "TIMELY" filing...The undersigned further declares that "HE" is the petitioner in this "ACTION" and "HIS" forgoing was mailed first-class postage prepaid on May-8", 2019 placed in the institutions "LEGAL" mail system.

Executed at MacDougal CI. Suffield CT on May-8th, 2019.

by MY "Factual Innocence" !!!
Michael A. Young Petitioner

ATTACH #1

Received 3-22-19

Ex. #1

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

March 18, 2019

Mr. Michael A. Young
Prisoner ID #232802
MacDougal CI
4486 East Street South
Suffield, CT 06080

Re: Michael A. Young
v. Carol Chapdelaine, Warden
No. 18-7321

Dear Mr. Young:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

Received "BACK" 3-22-19

Inmate Request Form

Connecticut Department of Correction

CN 9601
REV. 1/1/08

Inmate name: Michael Young ✓ | Inmate number: 232802

Facility/Unit: MacDougal | Housing Unit: H1-36 | Date: 3-13-19

Submitted to: Mailroom "NORTON"

Request: Today 3-13-19 I'm mailing "MY LEGAL" mail 10X13 envelope sent to U.S "SUPREME" Court Clerk, 1 First street, NE., Washington DC. 20543-0001. As such would "you" confirm in writting the "ACTUAL" date it goes out of this facility. "YOUR" direct attention and cooperation will be "GREATLY" appreciated!!!

Thank you

continue on back if necessary

Previous action taken:

continue on back if necessary

Acted on by (print name): | Title:

Action taken and/or response:

3-15-19.

NORTON

continue on back if necessary

Staff signature: | Date:

Received "BACK" 3-22-19

Inmate Request Form

Connecticut Department of Correction

CN 9601
REV. 1/1/08

Inmate name: Michael Young | Inmate number: 232802

Facility/Unit: MacDougal | Housing Unit: H1-36 | Date: 3-20-19

Submitted to: Mailroom "NORTON"

Request: "MY SECOND" inquiry... Regarding "MY LEGAL" 10x13 envelope mailed on 3-13-19 to U.S. "SUPREME" Court Clerk, 1 First Street, N.E. Washington D.C. 20543-0001. Then "TODAY" 3-20-19 once "AGAIN" to the U.S. "SUPREME Court was another 10x13 "LEGAL" mail envelope... As such would "You" confirm in writting the "ACTUAL" dates each went "OUT" of "THIS" facility ???

"YOUR" direct attention and cooperation will be "GREATLY" appreciated !!!

Thankyou

continue on back if necessary

Previous action taken:

continue on back if necessary

Acted on by (print name): | Title:

Action taken and/or response:

(1) "MY" 3-13-19 10x13 3-15-19

(2) "MY" 3-20-19 10x13 3-21-19

NORTON

continue on back if necessary

Staff signature: | Date:

UNITED STATES"SUPREME"COURT

MICHAEL A.YOUNG

V.

CAROL CHAPDELAINE

CASE NO.

18-7321

MARCH 3rd, 2019

MOTION FOR"EMERGENCY"RULE 36"DECLARATION TO ENLARGEMENT ON PERSONAL RECOGNIZANCE PENDING"FINALITY"

"NOW"..Comes petitioner already with"GOOD"forgoing"CAUSE"explicitly"SHOWN"an"MOVES"this "HONORABLE"Court"SUPREME CHIEF"Justice"TRUTH BADER GINSBURG"under"RULE 36.3(a),(b)for "EMERGENCY"declaration to immediate"ENLARGEMENT"on"PERSONAL RECOGNIZANCE"pending"MY" "FINALITY"in above"ENTITLED"matter...In further support thereof as follows...

ERROR OF"FACTUAL"LAW"

I. "CORRUPT"STATE COURT"REVIEW"

1. "YES"..As I"DENY"the"RIGHT"to remain"SILENT"the"PROPER"standard of"LEGAL"review here exceeds way"BEYOND"the constitutional"LIMITATIONS"of"OBSTRUCTIONIST"Oliver"MISCONDUCTED" Planko"MISAPPLICATION"..."SEE"trial court 11-13-14 transcript 3:16-cv-1720(AWT)[Doc.20]"FOUND" at*1,*2..."YES"...In egregious"NON"compliance"THIS CASE"is much"MORE"consistant with state court "SUPREME AUTHORITY"confirmation set forth by State v.LaFleur 307 Conn.115...In that it"FAILS" to conform to"REQUIREMENTS"of"FEDERAL"constitutional"LAW",in light of"CHIEF"Justice"CHASE T. ROGERS"supervisory alignment"HOLDING"with"THIS"courts"CHIEF"Justice"ROBERT A.KATZMANN"panel "LAW OF CASE"in U.S.v.Dhinsa 243 F.3d 635...Consistant with"OTHER"circuit decisions"FOUND"in U.S.v.Vasques-Chan 978 F.2d 546:U.S.v.Spinney 65 F.3d 231:and U.S.v.Dinkane 17 F.3d 1192... "YES"..Making"PROPER"subject of the"VACATURE"approch that"MUST"provide immediate relief "RIGHTS NOW"with"NO"further"ACTUAL INJURY"!!!

ERROR OF"FACT"RENDERING JUDGMENT"VOID"

II. "CORRUPT"STATE COURT JURY SELECTION

2. As"YOU"know I have been"DENIED"access to"ALL"meaningful jury selection transcripts,audio recordings,and"MY RIGHTS"to"ANY"disclosure as"NECESSARY"for"PROPER"preparation and presentation of"MY"motion challenging this"ILLEGAL"selection procedure"ALL"in"VIOLATION"of 28 U.S.C.§1867(f)..."SO"..Just recently mid-January 2017 over 3 years latter I"FINALLY"obtained "ONLY"LIMITED"transcribed access to[T:8-14-13/8-15-13]"SEE"3:16-cv-1720(AWT)[Doc.20]"AGAIN" at*1,*2...Also worth"NOTING"..Simultaneous with"MY"2-23-17 state court"ILLEGAL"jury selection challenge an"OBSTRUCTIONIST"Oliver"DISCARDED"filing 3:16-cv-1720(AWT)[Doc.21]at*1"SEE" [EXHIBIT 7]...Here"ALL"(AWT)pleding"DENIALS"with"PREMATURE"case"DISMISSALS"were"ALL"entered upon the docket in a 2-23-17 after hours"PARTY"..3:16-cv-1720(AWT)[Doc.14],..3:16-cv-1744(AWT) and 3:16-cv-1798(AWT)[Doc.13]!!!

3. Anyway,where upon"MY"intelligently"LAZER FOCUSED"review I've"NOTICED"in addition to"ALL other countless mistated alterations documented throughout the"ENTIRE"transcribed process, "DECEITFULLY"here are"TWO"days"MANIPULATED"into"ONE"day with the existance of intentional "TAMPERING"[T:8-15-13]...Clearly convincingly resulting in"SEVERE"prejudicial"DEFECTS"during the appeal and throughout"ALL"post-conviction procedures.."AN"..YUP"..Along with"OLIVERS" "UN"FAIR"ness of available settlement procedure have and"STHIL"are in"FACT"in"THIS"unethical "VIOLATION"of the due process clause of the 14th amendment see Layne v.Gunter 559 F.2d 850: Morales v.Rogue v.P.R.558 F.2d 606:Burrel v.Swartz 558 F.supp.91:U.S.v.Pratt 645 F.2d 89: Rheuark v.Shaw 628 F.2d 297:and Parker v.Texas 464 F.2d 572 !!!

4. "NOW"..."YOU"see upon"MORE"of"MY"COMPETENTLY"consistant"LAZER FOCUSED"intelligence that "THIS"Rockville G.A.19 jury selection process"VIOLATED"MY"statutory and constitutional "RIGHTS"..."AN"..That"DECEITFULLY"executed"CORRUPT"plan here specifically"MANIPULATED"the "PROPER"requirements of Jury Selection and Service 28 U.S.C.§1861-1869"ACT"..."YES"..Also resulting in disproportionate"IMPROPER"underrepresentation of"PROPER"county sections in "VIOLATION"of"MY RIGHTS"under"EQUAL"Protection Clause of the 5th amendment see U.S.v.Jackson 46 F.3d 322..."SHOWN"here in such egregious"NON"compliance with federal"MANDATE"of"RANDOM" "SELECTIONS"in this"MISCONDUCTED"venire drawn in"MISUSE"and"ABUSE"of"PROPER"delegated clerk "DUTIES"as set forth by 28 U.S.C.§1866(f)...see U.S.v.Kennedy 548 F.2d 604:Berry v.Cooper at 577 F.2d 322...Through of course"DELIBERATE"systematic"EXCLUSION"in this"PROVEN"Rockville G.A.19"ILLEGAL"jury selection process.."YUP"..."SO"..Also see Duren v.Missouri 439 U.S.357: U.S.v.Rioux 97 F.3d 648:U.S.v.Gometz 730 F.2d 475:and Davis v.Warden 867 F.2d 1003.."YET"..In contrast with U.S.v."YOUNG"618 F.2d 281.."SO"..Consistantly"RIPE"for"ALL"sustained"RELIEF"as implicated in"YOUNG"at 1288 8,9"RIGHTS NOW"with"NO"further"ACTUAL INJURY"!!!

5. "BUT"..Even"MORE"so...Excluded panel members from sevice for invidious reasons with use of"TACTICAL"unethical"FORCED"judicial(Mullarkey J)"MANUVERS"[T:8-15-13pg23].."YET"another "VIOLATION"of 28 U.S.C.§1862,with a"FACT"verified unconstitutional demonstration also in "VIOLATION"of 28 U.S.C.§1863...Obviously,"ALL"systematic"EXCLUSIONS"clearly"ENABLES"meeting the"BURDEN"of already"SHOWN"substantial"FAILURE"to"COMPLY"with"REQUIREMENTS"of the"ACT",of course"MY"requirement set forth by 28 U.S.C.§1867(a).."AN"..I also contend while"IMPROPERLY" being"DENIED"further"ENTITLED"transcribing with"REFUSED"audio recordings and"RIGHT"to aocess discovery"ONLY"hampers"ANY"further"ABILITY",another"IMPROPER"curtailment of"MY RIGHTS"..."YA".. "NOW"..Demonstrated by"MY"jury selection"EXCERT"obtained 6-6-17",INCOMPLETE"of course"ONLY" just recently 3-3-17"IMPROPERLY"transcribed with"MORE"telling(Mullarkey)"CIRCUS COURT ACTION" [T:8-9-13pg1-29].."AN"..Revealing"MORE"pre-arrainged"CORRUPT"verified"STAGE SETTING"for"YES".. another"TRUE"intentional"SERIOUS"structural"ERROR"in"DECEIT"[T:8-9-13pg29-36].."YUP"..Obviously meeting the extraordinary"CRITERIA"in"THIS HABEAS APPEAL"that is"NEEDED"for being"GRANTED"MY" immediate relief"RIGHTS NOW"with"NO"further"SUFFERING"of"ACTUAL INJURY"!!!

III. "CORRUPT"STATE COURT"SECRET WATER SIGNAL"/"SECRET CODES"

6. "MORE"IMPORTANTLY"..Consistant with new"LAW OF CASE"uncovered in State v."RANDOLPH"at 2011 Conn.Super"LEXIS"125:2011WL 522092 here"CRIMINAL"KWAK"(KKs)"CORRUPT"judicial"SECRET" "WATER"undisputable"SIGNAL"is"SET UP"in"THIS CASE"at[T:8-26-13pg162]"SEE"3:16-cv-1720(AWT) [Doc.12]"FOUND"at#1.."YA"..Through the states"KNOWN"by"ALL"[Line 9-10] use of"UNCORRECTED" solicited"PERJURY"followed by"PRE-STAGED"Professor"MALPRACTICE"with"NO FURTHER"direct nor "ANY"redirect examination.[T:8-26-13pg163-180]...Also Professor confirmed"HAND"signals at [Line 25-27].."AN"..That"CORROBORATION"is depicted by"SMART"aleck"SECRET CODE"in"MISSING" witness"FORUM"!!! [T:8-28-13pg141]"SEE"3:16-cv-1720(AWT)[Doc.12]"FOUND"at#2,#3!!!

7. Then"WE HAVE"the"NON"disclosed"HAND/HEAD"nod prosecutorial"SECRET CODE"(KWAK)judicially "MISCONDUCTED"through"SECRET WATER SIGNAL"for"SECOND"(2)"TIME"at[8-28-13pg141]"SEE"SAME" 3:16-cv-1720(AWT)[Doc.12]"FOUND"at#2,#3...With of course the Professors overruled"HEAD"nod "SECRET CODE"objection [pg.92],together with"HIS"[pg.1]"RESPONSE"to(KWAK)"SECRET"inuendo in "LIE"of"DECEIT"are"CORRUPT"intentional"ACTS"manipulating the"ACCURATE"record,an"STAGE SETTING" for"END OF DAY"set up"CARPENTER SCAM"!!![T:8-28-13pg198-201]!!!

8. "SO"..After"MORE"uncorrected"KNOWN"Detective Carpenter"PERJURY"regarding:Why she don't want to be here today"[T:8-29-13pg9-10]"SEE"3:16-cv-1720(AWT)[Doc.12]"FOUND"at#4,#5...another "MISCONDUCTED"(KWAK)invoked"SECRET CODE"jesture"ENDED"Professor"MALPRACTICE"cross examination, "CORROBORATED"by"HIS"apology to everyone"FOUND"here on [pg.39]...Then undergoing anxiety"PANIC" of"CARPENTER"organized"KNOWN"solicited"PERJURY"her"SECRET SIGNAL"of"RETREAT"is immediately "MET"with"THIRD"(3)(KWAK)"MISCONDUCTED"judicial"SECRET WATER SIGNAL"ending prosecutorial questioning again invoking"NO"Professor Pattis"REDIRECT"[T:8-29-13pg42].."NOW"..This direct prosecutorial"KNOWN"Trooper"BARROWS"solicited"PERJURY"organized"TIMELY"ending is"BEYOND" "absolute certainty"STAGED SETTING"corroborating"CRIMINAL"KWAK"(KKs)"FOURTH"(4)"SECRET WATER" "SIGNAL"for"BARROWS"relayed confirmation"BACK"in affirmative"SECRET CODE"[T:8-29-13pg88-91]... "AN".."YA"..Undisputably"MUST"provide"MY"immediate relief"RIGHTS NOW"with"NO"further" "SUFFERING"of"ACTUAL INJURY"!!!

9."HERE"...Corroboration of"MORE"Rockville GA 19"SECRET SIGNAL"use in Tolland County"CODE"of ongoing corporate"CORRUPTION"is"PROVEN"with constitutional varification.[EXHIBIT 1].."YES".. With"MOORE"a"BLATANT"inapplicable"SUA SPONTE"judicial"CORRUPT"doctrine in"SFERRAZZA" deliberate"BYPASS"procedural"RULE OF EVIL"spoken"CODE"an indisputable"CREATION"to"CLEARLY" thwart"JUSTICE"for"ALL"..see Barlow v.Comm.of Corr.166 Conn.App.408(quoting)150 Conn.App.781 at[EXHIBIT 2,3].."SPECIAL NOTE" This"PATTERN"is"SAME"verified"REITERATION"with"MY" constitutional"PROOF"corroborating"MERITS"of"CRIMINAL"judicial"MISCONDUCT"by"DISHONOR"of "SAMUAL SFERRAZZA"an consistant"DISHONORABLE"current"BEDROCK"GA 19"ACTIONS"of"JOHN M.NEWSON" as"FOUND"in"BOTH MY"civil"RICO"18 U.S.C.§1961-67"CAUSE OF ACTIONS".."YES"..Pending in this U.S."SUPREME"Court at 18-8223...Where"MY SECOND"2-22-19"REFILE"18-????"ILLEGAL"[D.O.C.]

consistant"FELONY"mail"COLLUSION"is pre-organize"STHIL"missing in"COMBAT"..."BUT"...Once"AGAIN" way"BEYOND MY FAIR"business practices in"MY COMPETENT"compliant"GOOD FAITH"obligational "DUTIES"is"YET"another"TIMELY"18-????"REFILE"accompanying"THIS"application!!!

Wherefore with"RESPONDENT"stated position in"EXERSIZE"of"FIFTH"amendment"SILENCE"...Under "MY COMPETENTLY"articulated compliant"SHOWING"petitioner explicitly request constitutional "AUTHORITY"of"SUPREME"Court"CHIEF"Justice"TRUTH BADER GINSBURG"under"GREAT HONORABLE" 28 U.S.C.§ 2106 to"TAKE"expeditious"CORRECTIVE ACTION"and"GRANT"this"EMERGENCY"declaration, then"ORDER MY"immediate"ENLARGEMENT"on"PERSONAL RECOGNIZANCE"pending"MY FINALITY"in above "ENTITLED"forgoing"REALM"of jurisdictional"SUBJECT MATTER"!!!

EXPLICITLY SUBMITTED

BY: MM "Factual Innocence"!!!

MICHAEL A.YOUNG

The"SOLE FORCES"of"SPECIAL SECRET"intelligence eliminating"ALL"forums of malicious"LAW"!!!

DECLARATION UNDER 18 U.S.C.§1621/28 U.S.C.§1746

I,Michael A.Young declare in"TRUTH"affidavit process,certified under penalty of"PERJURY" that the information in this application is"TRUE"and"ACCURATE"to the"BEST"of"MY"knowledgable intelligence an"CAN ONLY"be"REBUTED"by"SAME"in"RESPONSE"thereto.Filed under"SUPREME"Court "RULE 29.2"procedure for the benefit of"TIMELY"filing...The undersigned further declares that"HE"is the petitioner in this"ACTION"and"HIS"forgoing application was mailed first-class postage prepaid on March 13,2019 placed in the institutions"LEGAL"mail system..."AGAIN"...On March 20,2019...March 29,2019...April 22,2019..."AN"...April 25,2019!!!

Executed at MacDougal CI.Suffield CT.on March 13,2019..."AGAIN"on March 20,2019..."AN"... March 29,2019...April 22,2019..."AN"...April 25,2019!!!

BY: MM "Factual Innocence"!!!

MICHAEL A.YOUNG

FURTHER DECLARATION UNDER 18 U.S.C.§1621/28 U.S.C.§1746

I,Michael A.Young further"DECLARE"this"SUPREME"Court"RULE 21"motion is further certified as"COMPETENT"compliant application under"RULE 22"for"ENTITLEMENT"as set forth by"OUR" U.S."SUPREME"Court"RULE 36.3(a),(b),applicable"RELIEF"!!!

BY: MM "Factual Innocence"!!!

MICHAEL A.YOUNG

Exhibit # 1

OFFICE OF
THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE (860) 258-5800 FAX (860) 258-5858

Memorandum

TO: Michael Gailor
Executive Assistant State's Attorney

FROM: Michael Sullivan
Chief Inspector

DATE: 02/02/2017

SUBJECT: Allegations Made by Court Reporter Lori Guegel

At your direction I initiated an investigation into the allegations made by Court Reporter Lori Guegel.

On 01/06/2017 (1300 hours) I met with Guegel at the Tolland County Courthouse. I had previously spoken to Guegel by telephone and explained my inquiry to her. She indicated she had spoken to her supervisor and would meet with me. Guegel presented as very reluctant to speak with me. It was clear that she felt her job was in jeopardy. We spoke for at least ten minutes before she agreed to speak with me about the allegations she initiated.

Guegel stated she was the court reporter on the matter of Daniel Diaz v. Warden (12/07/2016.) She believed the trial last four days. Guegel reported the first three days were uneventful.

Guegel stated that on the fourth day SASA Mary Rose Palmese was testifying. Guegel explained that her position in the courtroom faces the gallery. The witness and the judge are behind her. Guegel stated she can see the gallery but cannot see the witness or the judge. Guegel stated there was one male in the gallery, believed to be sitting in the second row, behind Daniel Diaz. Guegel stated she later learned from Defense Attorney Stephanie Evans that this male was Jerry Chrostowski.

Guegel stated that Palmese was testifying for approximately one hour. Guegel stated that approximately six (6) times she observed hand signals being made by Chrostowski to Palmese. Guegel stated that on each of these occasions the defense attorney would ask Palmese a question. Palmese would start to answer and receive a hand signal from Chrostowski. Each time the judge would interrupt or let her finish and then state the answer

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that Palmese meant to answer. Guegel stated that on each of these occasions Chrostowski and SASA Jo Anne Sulik would cover their faces and laugh.

Guegel was asked to explain the hand signals. Guegel described one as a motion of the hand near the neck and the other as a motion of the hand by the side of the head.

Guegel stated that the next witness to testify was a "cop" (Attorney Frank Canace.) Guegel stated the defense attorney starting to ask questions about hand signals being used in a prior trial. Guegel stated, "that's when it fully hit me." Guegel stated she then realized that Chrostowski had been signaling Palmese.

Guegel stated that it appeared to her that the Judge, Palmese, and Chrostowski were working in a coordinated fashion. She believes that the Judge was interrupting Palmese and then answering the questions for her.

Guegel stated that during a break she ran into the defense attorney on the elevator. Guegel advised the defense attorney what she had observed.

Guegel stated if she looked at the transcript she would be able to point out the parts of the testimony where the signaling took place. Guegel stated she was not allowed to type the transcript and directed me to her supervisor, Sharon Rosato. Guegel agreed to meet at a later time to review the transcript when it was obtained by me.

I met with Sharon Rosato immediately after Guegel and ordered the transcript.

Temporary Assistant Clerk (TAC) Mary Clark was interviewed on 01/06/2017. Clark stated she was the Clerk in the courtroom on 12/07/2016 in the case of Daniel Diaz v. Warden.

Clark stated that she sits to the right of the Judge and in front of the Petitioner. The witness sits to the left of the Judge. Clark stated she cannot see the witness from her position. Clark stated she did see one male in the gallery (Chrostowski) sitting behind the Petitioner. Clark stated she did not see Chrostowski making hand signals to the witness. Clark stated she did not see the Judge cut off the witness or suggest answers to the witness.

Clark stated she was aware of the general allegations in this case as a result of hearing from others in the courthouse.

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On 01/06/2017 I interviewed Judicial Marshal Rick Barile. Barile was one the marshal's assigned to the case of Daniel Diaz v. Warden on 12/07/2016. Barile stated he did see one male in the gallery behind the Petitioner. Barile did not see any hand signals being made by this male. Barile stated the Judge did nothing out of the ordinary during the trial.

Barile stated that Palmese was an authoritative figure and didn't need any directions during her testimony. It was clear to Barile that Palmese didn't like being questioned and was used to being the one asking the questions.

Michael Pio (Lead Marshal) identified Pat Coomey as the second marshal assigned to the Daniel Diaz v. Warden courtroom on 12/07/2016. I interviewed Coomey on 01/06/2017. Coomey stated he had no recollection of being in the courtroom. Coomey stated that if nothing out of the ordinary happened then each day blends together and he couldn't differentiate 12/07/2016 from any other day.

On 02/01/2017 I met with Guegel at the Tolland County Courthouse a second time. Guegel was given a copy of the transcript from 12/07/2016 and asked to point out the areas of the transcript where she alleges signals were involved. Guegel agreed to do so and asked if she could read and absorb the transcript first and meet with me another date. I asked Guegel to read the transcript and makes notations where certain things happened. She agreed to do so.

Guegel was asked to explain her statement to Judge Bright that Diaz had been wrongfully convicted. Guegel stated that she formed this "opinion" during Canace's testimony. Canace testified that he was also a police officer and did not advise Diaz of this fact. This formed the basis of Guegel's "opinion."

I also advised Guegel that in reviewing the transcript it was apparent that Evan's reference to hand signals in a prior trial was a trial not related to Diaz. Guegel stated she did not know what trial Evan's was referring to. The testimony just made her realize what was happening in Diaz's trial.

On 02/02/2017 I received a telephone call from Guegel. Guegel stated she was "not comfortable with speaking to [me] again." Guegel stated that her supervisor advised her today that she (supervisor) would be docking Guegel's pay for the time she spent speaking to me on 02/01/2017. Guegel stated she knows that her allegations have put her on people's

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"radar." As a result of her pay being docked Guegel feels that her job is in jeopardy. Guegel stated she would not meet with me again and will be returning the transcript to me.

End.

Exhibit #2

ALISON BARLOW *v.* COMMISSIONER OF CORRECTION (AC 37417)

Beach, Keller and West, Js.

Syllabus

The petitioner, who had been convicted of various crimes, claimed that his trial counsel, M, and his appellate counsel, N, rendered ineffective assistance. The habeas court rendered judgment dismissing the claim against M and denying the claim against N. The petitioner thereafter appealed to this court, which reversed the habeas court's judgment in part and remanded the case to the habeas court for further proceedings.

This court concluded as a matter of law that M rendered ineffective assistance in having failed to advise the petitioner adequately concerning the trial court's plea offer. This court also determined that because M had rendered ineffective assistance, it did not need to consider whether N had rendered deficient performance in failing to pursue a claim of ineffective assistance against M. This court's remand order, inter alia, directed the habeas court to conduct further proceedings on the issue of whether the petitioner had been prejudiced by M's deficient performance. Thereafter, on remand, the proceedings were presided over by the same judge who presided over the initial habeas proceedings and issued the judgment that was reversed in part. The habeas court first conducted a hearing concerning this court's remand order. The petitioner argued that the remand order required a new evidentiary hearing and that the matter should be decided by a different judge. The respondent Commissioner of Correction argued that the remand order was in the nature of an articulation request and did not require a new evidentiary hearing, but only a decision as to the issue of prejudice on the basis of the evidence already in the record. The court ruled that the respondent's interpretation was more logical and that the remand order did not require a new evidentiary hearing, but merely necessitated further proceedings. Thereafter, the court denied the petitioner's motion for recusal in which he argued that the court was precluded by statute (§ 51-183c) and rule of practice (§ 1-22 [a]) from retrying the case on remand. The court thereafter denied the petition for a writ of habeas corpus. The court then granted the petition for certification to appeal, and the petitioner appealed to this court. He claimed, inter alia, that the habeas court improperly denied his motion for recusal and his request for an evidentiary hearing. *Held:*

1. The habeas court improperly denied the petitioner's motion for recusal because § 51-183c necessitated that a different judge preside over the proceedings on remand, as that statute applied to the habeas judge here who tried the case without a jury and whose judgment later was reversed by this court; accordingly, because the respondent could not demonstrate that the habeas judge's failure to recuse himself was harmless error, the habeas court's judgment was reversed and the case was remanded so that a different habeas judge could try the issue of whether the petitioner was prejudiced by M's deficient performance.
2. This court determined that its previous remand order did not preclude an evidentiary hearing or limit the habeas court to a consideration of only the evidence that had been admitted in the prior habeas proceeding, as it was not appropriate for the habeas court to construe the remand order as being in the nature of an articulation request, and there were no findings as to the issue of prejudice for the court to explain because it did not make findings as to prejudice in its prior opinion; moreover, if this court had determined that it was appropriate for the habeas court to make a finding with respect to prejudice on the basis of the evidence

in the record, it would not have ordered further proceedings for that purpose, but would have instructed the habeas court to articulate with respect to that limited factual issue that had been litigated by the parties at the first habeas trial.

Argued February 9—officially released June 28, 2016

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Sferrazza, J.*; judgment dismissing the first count of the petition and denying the second count of the petition, from which the petitioner, on the granting of certification, appealed to this court; thereafter, this court reversed in part the judgment of the habeas court and remanded the case for further proceedings; subsequently, the court, *Sferrazza, J.*, denied the petitioner's motion for recusal; thereafter, the court, *Sferrazza, J.*, denied the petition and rendered judgment thereon, and the petitioner, on the granting of certification, appealed to this court. *Reversed; further proceedings.*

Naomi T. Fetterman, with whom was *Aaron J. Romano*, for the appellant (petitioner).

Mitchell S. Brody, senior assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, and *Eva B. Lenczewski*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

KELLER, J. Following a grant of certification to appeal, the petitioner, Alison Barlow, appeals from the judgment of the habeas court denying his amended petition for a writ of habeas corpus. The petitioner claims that the court improperly (1) denied his motion for recusal, (2) denied his request for a new evidentiary hearing, and (3) concluded that he failed to demonstrate prejudice as a result of his trial counsel's deficient performance.[1] We agree with the first and second claims raised by the petitioner, reverse the judgment of the habeas court, and remand the case for further proceedings consistent with this opinion.

The following facts and procedural history are relevant to this appeal. In 1998, following a jury trial, the petitioner was convicted of attempt to commit murder in violation of General Statutes §§ 53a-49 (a) (2) and 53a-54a, conspiracy to commit murder in violation of General Statutes §§ 53a-48 (a) and 53a-54a, two counts of assault in the first degree in violation of General Statutes § 53a-59 (a) (1) and alteration of a firearm identification number in violation of General Statutes § 29-36. The petitioner was sentenced to a total effective term of thirty-five years imprisonment. Following a direct appeal brought by the petitioner, this court affirmed the judgment of conviction. *State* v. *Barlow*, 70 Conn. App. 232, 797 A.2d 605, cert. denied, 261 Conn. 929, 806 A.2d 1067 (2002).

Following his conviction, the petitioner brought several petitions for a writ of habeas corpus. At issue in the present appeal is an amended petition that the petitioner filed on January 17, 2002—his third petition for a writ of habeas corpus—in which he alleged in count one that his trial counsel, Attorney Sheridan L. Moore, rendered ineffective assistance in connection with a plea bargain offer[2] and in connection with the represen-

[1] Because our resolution of the petitioner's first claim is dispositive of the appeal, we need not address his third claim. We will address his second claim because the issue involved therein is likely to arise during the proceedings on remand.

[2] Specifically, the petitioner alleged: "Trial counsel's representation with regard to the plea bargain offer was ineffective in the following ways:

"a. counsel failed to advise the petitioner that the offer was a one-time offer and if not accepted immediately it would be withdrawn;

"b. counsel failed to explain the court's position regarding the offer;

"c. counsel failed to explain that the court would not accept a counteroffer from the petitioner;

"d. counsel failed to return to the lockup and advise the petitioner that the court rejected his counteroffer so that the petitioner would have an opportunity to accept the court's offer;

tation that she afforded the petitioner during the trial generally.[3] In count two, the petitioner alleged that his prior habeas counsel, Attorney Christopher Neary, rendered ineffective assistance by failing to pursue a claim that Moore had rendered ineffective representation during his criminal trial.

Following a hearing, the habeas court, *Sferrazza, J.*, dismissed the amended petition with respect to the claim of ineffective representation by Moore set forth in count one. With respect to this count, the court, sua sponte, invoked the doctrine of deliberate bypass and stated, in relevant part: "This, the petitioner's third

"e. counsel failed to provide a meaningful explanation of the plea offer extended by the court;

"f. counsel failed to advise the petitioner as [to] the benefits of accepting the court's offer;

"g. counsel failed to recommend the petitioner accept a beneficial offer;

"h. counsel failed to request [that] the court continue the case to give the petitioner an opportunity to consider the offer and/or discuss the offer with family before the court withdrew the offer;

"i. counsel failed to discuss the strength of the state's case and evidence before the plea offer was withdrawn;

"j. counsel failed to advise the petitioner of the mandatory minimums, maximum sentences of each separate offense and the effect of consecutive sentences;

"k. counsel failed to ensure [that] the petitioner had an opportunity to accept the court's offer after he was fully advised of all implications, legal and otherwise."

[3] The petitioner alleged: "Trial counsel's representation with regard to trial was ineffective in the following ways:

"a. counsel failed to visit the petitioner in jail to discuss the state's evidence, the strength of the state's case, the defenses which could be presented and evidence which could be presented in defense of the case;

"b. counsel failed to keep [the] petitioner informed as to the status of the case;

"c. counsel failed to communicate with [the] petitioner either in writing or by telephone;

"d. counsel failed to advise the petitioner of the specific elements of each crime charged and the maximum and minimum penalties which could be imposed if convicted;

"e. counsel failed to meet with potential witnesses prior to trial;

"f. counsel failed to request [that] the physical evidence be examined by the state forensics laboratory;

"g. counsel failed to develop any theory of defense for trial;

"h. counsel failed to file a motion in limine to prevent testimony about statements allegedly made by the petitioner to police officers;

"i. counsel failed to do any investigation prior to trial."

habeas action in which he has asserted claims of ineffectiveness against Moore, is a blatant example of the procedural evils that the deliberate bypass rule was created to thwart." The court denied the petition with respect to the claim of ineffective representation by Neary set forth in count two. In rejecting the claim that Neary rendered ineffective representation for, in relevant part, failing to pursue a claim of ineffective representation against Moore, the court made several findings with respect to the nature of Moore's representation of the petitioner with respect to the plea offer. In relevant part, the court stated: "The court has found that Moore fully apprised the petitioner as to the terms of the plea offer, including its temporary nature, the strengths and weaknesses of the prosecution and defense cases, and the possible outcomes after trial. . . .

"Moore, at the time of the petitioner's criminal case, had seventeen years of experience handling serious criminal matters as a special public defender and five and one-half years as a public defender for the Waterbury judicial district. This experience entailed defending clients charged with murder and trying such cases to verdict. No expert witness testified critically of Moore's representation of the petitioner. To the contrary, Attorney Neary averred that he examined Moore's performance for the petitioner's defense and found no basis for such an ineffective assistance claim against her.

"The court determines that the petitioner has failed to prove that Moore was deficient in any of the ways alleged surrounding the petitioner's rejection of the nine year plea offer. As a result, the petitioner has also failed to meet his burden of establishing that [prior habeas counsel had] rendered ineffective assistance by withdrawing the claims against Moore through amended petitions." (Citations omitted.)

The petitioner appealed to this court from the judgment of the habeas court. With respect to the petitioner's claim that the habeas court improperly dismissed his claim that Moore had rendered ineffective assistance with respect to the trial court's plea offer, this court ruled that, in the absence of any claim by the respondent, the Commissioner of Correction, that the doctrine of deliberate bypass applied in the present case, the habeas court erroneously had relied on that doctrine in dismissing that aspect of the petition. *Barlow* v. *Commissioner of Correction*, 150 Conn. App. 781, 785–88, 93 A.3d 165 (2014). After reviewing the findings of the habeas court and the evidence in the record, which included Moore's testimony during the habeas trial, this court disagreed with the habeas court's assessment of Moore's representation. This court, referring to Moore's undisputed testimony at the habeas trial, concluded as a matter of law that Moore's performance with respect to the plea offer was deficient "because she did not give the petitioner her professional advice and assistance concerning, and her evaluation of, the court's plea offer." Id., 802.

Although we resolved the issue of deficient performance in the petitioner's favor, this court rejected the petitioner's argument that, on the basis of the record, we could presume that he was prejudiced, under the applicable standard of prejudice, as a result of Moore's deficient performance concerning the plea offer. Id. This court agreed with the respondent that the habeas court was in the best position to determine an unresolved issue integral to whether the petitioner was prejudiced by Moore's deficient performance, specifically, "whether it is reasonably likely that the petitioner would have accepted the offer had he received adequate advice from Moore." Id., 804. In light of our resolution of the claim concerning Moore, this court concluded that it did not need to consider, on its merits, "the issue of whether Neary's performance was deficient for failing to pursue the issue of Moore's performance." Id., 783 n.1.

In the rescript of our opinion, this court set forth the following order: "The judgment is reversed in part and the case is remanded for further proceedings on the issue of whether the petitioner was prejudiced by counsel's deficient performance. In the event that the habeas court finds that the petitioner has established prejudice, and no timely appeal is taken from that decision, the judgment is reversed and the case is remanded with direction to grant the petition for a writ of habeas corpus. In the event that the habeas court finds that the petitioner has failed to demonstrate prejudice, and no timely appeal is taken from that decision, the judgment is reversed only as to form and the court is ordered to render judgment denying rather than dismissing the petition as it relates to the claim that Moore provided ineffective assistance of counsel." Id., 804–805.

Judge Sferrazza, who had presided over the habeas proceedings and, as discussed previously in this opinion, had issued the prior judgment that was the subject of this court's prior decision in the habeas matter, presided over the proceedings on remand. The record reflects that on August 5, 2014, at a hearing following the issuance of this court's remand order, Judge Sferrazza asked the parties to express their positions with respect to several issues, including whether this court's remand order required the court to hold an evidentiary hearing or whether the order required the court to make the required finding with respect to prejudice on the basis of the evidence in the record. Additionally, Judge Sferrazza raised the issue of whether, following this court's reversal of his prior judgment, he was presumptively disqualified from continuing with the case.

The petitioner argued that this court's remand order required a new evidentiary hearing and argued that the

matter should be heard and decided by a different judge. The petitioner's attorney stated that the petitioner would not waive his right to have the matter heard by a different judge. The respondent argued that this court's remand order did not require a new evidentiary hearing, but merely a decision to be made on the basis of the evidence already in the record. Further, the respondent argued that, because Judge Sferrazza had not yet decided the specific factual issue set forth in this court's remand order, it was proper for him to hear and decide the matter. Thereafter, on August 11, 2014, Judge Sferrazza issued a memorandum of decision in which he concluded that this court's remand order did not require a new evidentiary hearing. In relevant part, the court stated: "The court and the parties have found this remand order somewhat perplexing. The respondent asserts that the Appellate Court's order is in the nature of an articulation order concerning the prejudice determination. Under this view, this court would simply review the evidence adduced at the habeas hearing and render a decision resolving the prejudice question.

"The petitioner, on the other hand, argues that the Appellate Court intended that a new evidentiary hearing take place at which the parties could introduce evidence not previously presented. He also contends that General Statutes § 51-183c would necessitate that a different habeas judge preside over the new evidentiary hearing." The court went on to conclude that the respondent's interpretation of the order was more logical. Among the reasons it set forth for its interpretation of this court's remand order, the court observed that the order did not explicitly mandate a new hearing, but merely necessitated further proceedings. Accordingly, with respect to the prejudice issue before the court, it directed the parties to submit supplemental briefs "based on the evidence previously admitted . . . ."

On August 15, 2014, the petitioner filed a motion for review of Judge Sferrazza's decision with this court. The respondent opposed the motion. This court dismissed the motion on the ground that the issues raised therein were not subject to interlocutory review.[4]

On September 24, 2014, the petitioner filed a motion for recusal in which he brought into focus some of the arguments he had raised at the previous hearing concerning this court's remand order.[5] Relying on § 51-183c[6] and Practice Book § 1-22 (a),[7] the petitioner argued that, following this court's reversal of the prior judgment, Judge Sferrazza was prohibited from retrying the case on remand. Additionally, relying on rule 2.11 (a)[8] of the Code of Judicial Conduct, the petitioner argued that recusal was warranted because Judge Sferrazza's impartiality during the proceedings on remand might reasonably be questioned. The petitioner, first noting that, in his prior decision, Judge Sferrazza, sua sponte, had applied the doctrine of deliberate bypass in the respondent's favor and, in the context of rejecting

[4] As a result, this court's ruling on the motion for review did not assist in resolving the issues raised by Judge Sferrazza concerning the remand order.

[5] Attached to the motion was an affidavit from the petitioner's counsel, Aaron J. Romano, in which he averred in relevant part that the motion was made in good faith and in furtherance of the petitioner's constitutional rights.

[6] General Statutes § 51-183c, entitled, "Same judge not to preside at new trial," provides: "No judge of any court who tried a case without a jury in which a new trial is granted, or in which the judgment is reversed by the Supreme Court, may again try the case. No judge of any court who presided over any jury trial, either in a civil or criminal case, in which a new trial is granted, may again preside at the trial of the case."

[7] Practice Book § 1-22 (a) provides in relevant part: "A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. . . ."

[8] Rule 2.11 (a) of the Code of Judicial Conduct provides in relevant part: "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . ."

the petitioner's claim against habeas counsel, had rejected the petitioner's argument that Moore had performed deficiently in connection with the plea agreement, argued: "It is difficult to conceive that the trial court will be able to render a finding that [the petitioner] was prejudiced by conduct that, on the same record, the trial court did not find to be deficient, and afford [the petitioner] the requested relief. In order to preserve the appearance of impartiality and [the petitioner's] constitutional rights to a fair trial, this court should recuse itself."

In his memorandum of decision denying the petitioner's motion for recusal, Judge Sferrazza stated in relevant part: "The court discerns no cogent reason for recusal. . . . [T]his court has construed the remand order to compel the court to issue findings and rulings pertinent to the prejudice component of [*Strickland* v. *Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)] without the taking of additional evidence. It would be impossible for a different judge to fulfill that mandate. This would fly in the teeth of the Appellate Court's remand order.

"More importantly, the mere fact that a trial court has ruled against a party on one aspect of a case and that ruling was reversed on appeal fails to implicate General Statutes § 51-183c. The Appellate Court did not order a new trial, nor did it reverse this court as to the *prejudice* prong of *Strickland*." (Emphasis in original.) The court, relying on *Taft* v. *Wheelabrator Putnam, Inc.*, 255 Conn. 916, 763 A.2d 1044 (2000), and *State* v. *Santiago*, 245 Conn. 301, 715 A.2d 1 (1998), concluded that recusal was not required by the Code of Judicial Conduct. The court stated in relevant part: "The present case, on remand, involves no new evidence. Although it is not an articulation order, which compels a trial court to explain the conclusion it reached previously, the remand order is in the nature of an articulation of

a previously undecided matter. . . . [R]eversal of a judge's decision on one, limited issue in a case does not disqualify the judge from further participation with respect to other aspects of the case despite having the salutary experience of being overturned by a higher tribunal."

After the court ruled on the motion for recusal, both the petitioner and the respondent filed briefs with respect to the issue set forth in this court's remand order. The respondent objected to any attempt by the petitioner to rely on matters that were outside of the evidence that had been admitted at the petitioner's habeas trial.

In his written memorandum of decision of November 17, 2014, which is the subject of this appeal, Judge Sferrazza stated: "Because the remand order [of the Appellate Court] lacks clarity in some respects, a controversy had arisen as to whether the Appellate Court intended to require an entirely new habeas trial, before a different habeas judge, limited to adjudicating the prejudice issue, or simply was returning the matter to this court to make findings and draw conclusions as to prejudice utilizing the prejudice test . . . based on the evidence previously admitted. This court resolved that conundrum . . . holding that the Appellate Court meant for this court to supplement its original decision by determining those factual issues as to prejudice, which were previously unaddressed [in its prior decision]."

In its memorandum of decision, the court set forth several findings concerning Moore that it had set forth in its prior memorandum of decision addressing the merits of the petition for a writ of habeas corpus. Although it is unnecessary for us to set forth these findings in detail, we observe that the court once again set forth a generally positive assessment of Moore's

performance with respect to the plea offer. The habeas court found that Moore advised the petitioner of the status of the plea offer made by the trial court, "thoroughly reviewed" the evidence and possible witnesses, discussed matters related to the plea negotiations, and cautioned the petitioner that "a jury might find the prosecution's case persuasive despite his denials of participation in the drive-by shooting" at issue in the case. The petitioner, who received a sentence of thirty-five years of incarceration, attempted to demonstrate that, with proper counsel from Moore, it is reasonably likely that he would have accepted a plea offer that would have required him to serve fourteen years, execution suspended after nine years. The court found: "At no time did the petitioner express any interest in accepting a plea disposition which entailed more than six years incarceration. At the habeas trial, the petitioner averred that, had Moore recommended that he agree to the plea offer as being in his best interest, he would have readily changed his plea and accepted the sentence indicated, namely, fourteen years, execution suspended after the service of nine years." After observing that this court had determined that Moore had performed deficiently for failing to provide the petitioner with professional advice and assistance, including her evaluation of the plea offer, the habeas court observed that the petitioner had not presented any expert evidence to support that determination. The court also observed that Neary had testified that Moore had "handled the petitioner's criminal matter properly . . . ."

The court went on to conclude that the petitioner failed to establish by a preponderance of the evidence that there was a reasonable likelihood that he would have accepted the proposed disposition and given up his right to a jury trial had Moore advised him that accepting the offer was in his best interest. Among the findings made by the court with respect to this

determination, the court found that the petitioner had believed that his codefendants planned on retracting their statements implicating him in the crimes, the petitioner had consented to Neary omitting allegations of ineffective assistance of counsel claims against Moore in the context of prior habeas matters, and that the petitioner had "acknowledged that he never inquired of Moore as to what he should do, nor about her lack of recommendation [with respect to the plea offer]." After observing that the petitioner had a lengthy criminal history and a familiarity with the criminal court system, the court stated: "If the petitioner was irresolute in his desire to go to trial, unless the plea offer was reduced to six years imprisonment, one would have expected him to request Moore's opinion as to his best course of action or know the reason why she declined to afford him the benefit of that opinion." On the basis of its findings, the court denied the amended petition for a writ of habeas corpus. This appeal followed.

I

First, we address the petitioner's claim that the court improperly denied his motion for recusal. We agree with the petitioner's claim.

Before this court, the petitioner reiterates the arguments that he raised before Judge Sferrazza, as set forth previously in this opinion. Thus, the petitioner relies on the undisputed procedural history of this case as well as § 51-183c, Practice Book § 1-22 (a), and rule 2.11 (a) of the Code of Judicial Conduct.

The issue of whether § 51-183c required Judge Sferrazza's recusal in the present case is an issue of statutory interpretation over which we exercise plenary review. See, e.g., *State* v. *Smith*, 317 Conn. 338, 346, 118 A.3d 49 (2015). "The process of statutory interpretation

involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . In seeking to determine [the] meaning [of a statute], General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Efstathiadis* v. *Holder*, 317 Conn. 482, 486–87, 119 A.3d 522 (2015).

The mandate of § 51-183c, a subject of prior judicial interpretation, is plain and unambiguous. It provides in relevant part: "No judge of any court who tried a case without a jury . . . in which the judgment is reversed by the Supreme Court, may again try the case. . . ." General Statutes § 51-183c. Our rules of practice give effect to this statutory right by providing in relevant part: "A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein . . . because the judicial authority previously tried the same matter and . . . the judgment was reversed on appeal. . . ." Practice Book § 1-22 (a).

"[Section] 51-183c, by its plain terms, applies . . . to judges." *State* v. *AFSCME, Council 4, Local 1565*, 249 Conn. 474, 480, 732 A.2d 762 (1999). "The statute explicitly prohibits a judge who tries a case that is thereafter reversed to try the case on remand. There is no reasonable manner in which the language of the statute can be interpreted to yield a different result." *Gagne* v. *Vaccaro*, 133 Conn. App. 431, 437, 35 A.3d 380 (2012), rev'd on other grounds, 311 Conn. 649, 90 A.3d 196 (2014). "Furthermore, we have narrowly construed § 51-183c to apply solely to trials and not to all types of adversarial proceedings. . . . Section 51-183c does not apply to pretrial or short calendar proceedings." (Citation omitted; internal quotation marks omitted.) *Board of Education* v. *East Haven Education Assn.*, 66 Conn. App. 202, 216, 784 A.2d 958 (2001) (declining to extend § 51-183c to arbitration process); see also *Lafayette Bank & Trust Co.* v. *Szentkuti*, 27 Conn. App. 15, 19, 603 A.2d 1215 (1991) ("[s]ection 51-183c unambiguously applies exclusively to 'trials,' as distinguished from pretrial or short calendar matters"), cert. denied, 222 Conn. 901, 606 A.2d 1327 (1992).

Consistent with the arguments advanced by the respondent, Judge Sferrazza reasoned that recusal was not warranted because, in his prior decision, he had not made any findings concerning prejudice and, thus, this court had not reversed his prior judgment on the basis of such findings. Judge Sferrazza also reasoned that recusal was not warranted because he viewed this court's reversal as relating to only one aspect of his decision. Likewise, the respondent urges us to conclude that § 51-183c does not apply because this court's rescript expressly stated that the habeas court's judgment was "reversed in part . . . ." *Barlow* v. *Commissioner of Correction*, supra, 150 Conn. App. 804.

Neither the court nor the respondent has advanced any authority in support of their narrow interpretation

of § 51-183c, and we are unaware of any such authority. The statute broadly applies to judges who have tried cases without a jury in which their judgment later is "reversed." The statute does not restrict its application to cases in which issues to be considered on remand are identical to those that already had been decided by the trial judge. The reversal in the present case followed a trial, and pertained to the same general claim that was before the court during the proceedings on remand, namely, whether, under the proper standard, his trial counsel's deficient performance prejudiced the petitioner, thereby depriving him of his right to a fair trial. The habeas court's prior judgment dismissed the petitioner's petition with respect to the claim that Moore had rendered ineffective assistance and denied his claim that prior habeas counsel had rendered ineffective assistance. It appears that this court reversed the judgment *in part*, rather than in its entirety, because it was able to dispose of the appeal without reaching the merits of all of the claims set forth therein, including the claim challenging that portion of the habeas court's judgment in which it denied the petition. Specifically, this court explained that, in light of its resolution of the petitioner's claim that the habeas court improperly had dismissed the petition with respect to his claim concerning Moore's representation as to the plea offer, it did not need to consider the claim that the habeas court improperly had denied the petition with respect to his claim that prior habeas counsel had rendered ineffective assistance. *Barlow* v. *Commissioner of Correction*, supra, 150 Conn. App. 783 n.1.

Judge Sferrazza tried the petitioner's habeas case and rendered a judgment that, in part, was reversed by this court. Although this court did not specify in its remand order that a different judge should hear the case on remand, the requirement imposed by § 51-183c nonetheless applied to the proceedings on remand. This court,

in either its prior decision or remand order, did not include any language that suggested that Judge Sferrazza should hear the case on remand, the purpose of which was not to determine whether error occurred, but to correct error. Cf. *State* v. *Douglas*, 10 Conn. App. 103, 119, 522 A.2d 302 (1987); see also *State* v. *Gonzalez*, 186 Conn. 426, 436 n.7, 441 A.2d 852 (1982). It is of no consequence to the proper application of the statute that the remand order required consideration of an issue in the case that Judge Sferrazza had yet to resolve on its merits or that the prior judgment had not been reversed with respect to Judge Sferrazza's resolution of that unresolved issue of fact. In order for the petitioner to prevail on the issue of prejudice, the habeas court, on remand, would have to substitute the decision of the Appellate Court in place of its own prior decision, and to change not only the reasoning or basis of its prior decision, but the decision itself, which held that trial counsel's conduct was *not* deficient. See *State* v. *Lafferty*, 191 Conn. 73, 76, 463 A.2d 238 (1983) (on remand trial court must proceed in conformity with views expressed in reviewing court's opinion).

Because we conclude that recusal was warranted under § 51-183c and Practice Book § 1-22 (a), we need not address the petitioner's alternative argument that recusal was warranted under rule 2.11 (a) of the Code of Judicial Conduct. Rule 2.11 (a) of the Code of Judicial Conduct provides in relevant part that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . ."

Although we need not resolve the petitioner's alternative argument that the court did not properly consider the application of rule 2.11 (a) in the present case, we observe that, from an early stage in the remand proceedings, Judge Sferrazza expressed his uncertainty with respect to this court's remand order, including the

issue of whether it was proper for him to hear the case on remand. He afforded the parties an ample opportunity to address the issue of his presumptive disqualification under § 51-183c. Judge Sferrazza's decision reflects that because he concluded, albeit erroneously, that his participation in the proceedings on remand was required by this court's remand order,[9] he logically rejected the petitioner's argument that his participation in the proceedings on remand gave rise to a reasonable question concerning his impartiality.[10]

[9] The record reflects that Judge Sferrazza also based his decision, in part, on his belief that this court's remand order precluded him from considering additional evidence. As we discuss in part II of this opinion, we disagree with this construction of the order.

[10] In resolving the recusal issue, Judge Sferrazza relied on *Taft* v. *Wheelabrator Putnam, Inc.*, supra, 265 Conn. 916, and *State* v. *Santiago*, supra, 245 Conn. 340–41 n.25. Having reviewed these authorities, we conclude that neither of them governs the outcome of the recusal issue before us. In *Taft*, our Supreme Court did not set forth any analysis, let alone a holding, related to the issue of a trial court's involvement in a case on remand following a reversal of its judgment by a reviewing court. It does not appear that such issue was raised or considered in *Taft*. In *Santiago*, our Supreme Court reversed the judgment of a trial court with respect to its decision not to conduct a more extensive inquiry into a postverdict allegation of juror misconduct, and remanded the case for further proceedings. *State* v. *Santiago*, supra, 340. On the basis of certain findings by the trial court, the defendant raised a concern with respect to the court's impartiality on remand and claimed that a different trial judge should handle the case on remand. Id., 340–41 n.25. Our Supreme Court stated that the findings at issue "[did] not render the court biased and [were not a] bar to conducting the necessary further inquiry on remand." Id., 341 n.25. In its brief discussion of this issue, the court did not refer to § 51-183c or Practice Book § 1-22 (a). We observe that the court did not remand the case for a new trial on the merits of the case, but for further proceedings related to an allegation of juror misconduct. As opposed to a new trial, such a proceeding is more like a sentencing hearing, a hearing related to pretrial matters, or a short calendar hearing—proceedings to which § 51-183c does not apply. See, e.g., *State* v. *Miranda*, 260 Conn. 93, 131, 794 A.2d 506 (§ 51-183c does not apply to sentencing hearings), cert. denied, 537 U.S. 902, 123 S. Ct. 224, 154 L. Ed. 2d 175 (2002); *Board of Education* v. *East Haven Education Assn.*, supra, 66 Conn. App. 216 (§ 51-183c does not apply to pretrial hearings or short calendar hearings). In light of the particular circumstances of that case and the issues that would come before the court on remand, it determined prospectively that the trial judge's participation in the case on remand would not give rise to an appearance of impartiality or bias. Its determination in this regard was dispositive of the issue of the propriety of the trial court's participation in the case on remand. This court, however, did not make a similar determination in its decision in the petitioner's prior habeas appeal.

The respondent is unable to demonstrate that Judge Sferrazza's failure to recuse himself from the case on remand was harmless error. We conclude that the proper remedy is to reverse the judgment denying the petition for a writ of habeas corpus and to remand the case to the habeas court, so that the issue set forth in this court's prior remand order may be tried by another judge.

II

Although we have concluded in part I of this opinion that the judgment must be reversed and we remand the case to the habeas court, we shall address the petitioner's claim that the habeas court improperly denied his request for a new evidentiary hearing because that issue is likely to arise during the proceeding on remand. See *State* v. *Tabone*, 292 Conn. 417, 431, 973 A.2d 74 (2009) (addressing issue likely to arise on remand). We agree with the petitioner.

As we have explained previously in this opinion, this court's remand order stated in relevant part: "The judgment is reversed in part and the case is remanded *for further proceedings* on the issue of whether the petitioner was prejudiced by counsel's deficient performance." (Emphasis added.) *Barlow* v. *Commissioner of Correction*, supra, 150 Conn. App. 804. Judge Sferrazza invited the parties to address the issue of whether he should hold a hearing on remand. When the parties first appeared before the court to discuss the nature of the proceedings on remand, the petitioner represented that he wished to present additional evidence to the court, even specifying the nature of some of the additional

evidence he intended to present.[11] In declining this request, the court appears to have been persuaded by the fact that the remand order did not explicitly mandate a new hearing. Agreeing with the respondent's interpretation of the remand order, the court viewed its role as being in the nature of providing an articulation. Thus, the court ordered the parties to brief the prejudice issue solely on the basis of the evidence previously submitted to the court.

[11] The petitioner argued that he had been assigned new counsel who determined there was additional, available evidence bearing on the prejudice inquiry that had not been presented at the first habeas trial. Both at the hearing and in later submissions to the court, the petitioner explained that he intended to present new evidence that included, but was not limited to, transcripts from his criminal trial, expert testimony pertaining to trial counsel's plea advice, the arrest warrant for the petitioner, the mittimuses reflecting the sentences received by the petitioner's two codefendants, testimony from the petitioner's two codefendants, and the witness list from the petitioner's criminal trial. The petitioner attached some of this additional evidence to his posttrial brief but, following an objection by the respondent, the court declined to consider such materials.

Among the arguments advanced in his posttrial brief, the petitioner argued that such evidence was relevant to proving that, if Moore had counseled the petitioner adequately, he would have had accurate and relevant information that would have affected his decision with respect to the plea. This information, the petitioner argued, should have included an accurate assessment of the strength of the state's case. Additionally, the petitioner argued that Moore failed to explain the error of the petitioner's belief that the state's case would be significantly weakened if his two coconspirators decided not to stand behind their written statements to the police, which implicated themselves and the petitioner in the shootings, or if they decided not to testify against him at his trial. The petitioner argued that competent advice would have conveyed that, even if the coconspirators did not testify, it was possible for the state to introduce their statements implicating the petitioner under § 8-6 (4) of the Connecticut Code of Evidence as dual inculpatory statements, made against the penal interests of the two codefendants and the petitioner. In the event that the two codefendants testified contrary to their incriminatory statements made to the police, the petitioner argued, it was possible for the state to introduce the statements of the coconspirators under the doctrine of *State* v. *Whelan*, 200 Conn. 743, 763, 513 A.2d 86, cert. denied, 479 U.S. 994, 107 S. Ct. 597, 93 L. Ed. 2d 598 (1986), which is codified in § 8-5 (1) of the Connecticut Code of Evidence, or § 6-10 of the Connecticut Code of Evidence. The petitioner also argued that, insofar as there was evidence that his plea decision was based on his belief that he had an alibi defense, Moore did not file a notice of alibi and, in any event, was unable to present the testimony of witness that could have provided such a defense. Moreover, the petitioner intended to demonstrate that Moore failed to assess the "severe punishment" that he could expect following a conviction.

"Determining the scope of a remand is a matter of law because it requires the trial court to undertake a legal interpretation of the higher court's mandate in light of that court's analysis. . . . Because a mandate defines the trial court's authority to proceed with the case on remand, determining the scope of a remand is akin to determining subject matter jurisdiction. . . . We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary. . . .

"Well established principles govern further proceedings after a remand by this court. In carrying out a mandate of this court, the trial court is limited to the specific direction of the mandate as interpreted *in light of the opinion* . . . . This is the guiding principle that the trial court must observe. . . . The trial court should examine the mandate and the opinion of the reviewing court and proceed in conformity with the views expressed therein. . . . These principles apply to criminal as well as to civil proceedings. . . . The trial court cannot adjudicate rights and duties not within the scope of the remand. . . . It is the duty of the trial court on remand to comply strictly with the mandate of the appellate court according to its true intent and meaning. No judgment other than that directed or permitted by the reviewing court may be rendered, even though it may be one that the appellate court might have directed. . . .

"We have also cautioned, however, that our remand orders should not be construed so narrowly as to prohibit a trial court from considering matters relevant to the issues upon which further proceedings are ordered that may not have been envisioned at the time of the

remand. . . . So long as these matters are not extraneous to the issues and purposes of the remand, they may be brought into the remand hearing." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Brundage*, 320 Conn. 740, 747–48, A.3d (2016); accord *Higgins* v. *Karp*, 243 Conn. 495, 502–503, 706 A.2d 1 (1998); *Halpern* v. *Board of Education*, 231 Conn. 308, 313, 649 A.2d 534 (1994).

The narrow issue presented in the present claim is whether the habeas court properly construed the remand order such that it was akin to a request for articulation, and therefore did not permit the presentation of additional admissible evidence relevant to the issue submitted to the habeas court for its resolution. The remand order required "further proceedings," thus using a broad phrase that does not preclude an evidentiary hearing. Nothing in the remainder of the remand order, as interpreted in light of the opinion, limited the habeas court to consider only the evidence that had been admitted in the context of the prior proceeding.

Moreover, it was not appropriate for the court to construe the order as being in the nature of an articulation request. As the court did not make findings with respect to prejudice in its prior opinion, there were no relevant findings for the court to explain. If this court had determined that it was appropriate for the habeas court merely to make a finding with respect to the issue of prejudice on the basis of the evidence in the record, it would not have ordered "further proceedings," for that purpose, but merely would have instructed the court to articulate with respect to that limited factual issue that had been litigated by the parties at the first habeas trial. Further, it is not reasonable to construe the remand order as a request for articulation because, in the context of an articulation, the court is unable to alter any of its original findings. An articulation request is appropriate if "the trial court has failed to state the

basis of a decision . . . to clarify the legal basis of a ruling . . . or to ask the trial [court] to rule on an overlooked matter." (Internal quotation marks omitted.) *Dickinson* v. *Mullaney*, 284 Conn. 673, 680, 937 A.2d 667 (2007). None of these circumstances existed in the present case, in which, because of this court's resolution of the petitioner's appeal, it became necessary for the court to resolve the factual issue related to prejudice. "It is well established that a trial court may not alter its initial findings by way of a further articulation . . . . [A]n articulation is not an opportunity for a trial court to substitute a new decision [or] to change the reasoning or basis of a prior decision . . . ." (Citations omitted; internal quotation marks omitted.) *Sosin* v. *Sosin*, 300 Conn. 205, 240, 14 A.3d 307 (2011).

Typically, the next step in our analysis would be to consider whether the court's failure to afford the parties an opportunity to present evidence was harmful; *Higgins* v. *Karp*, supra, 243 Conn. 506; we need not reach that issue, as it relates to a proper remedy in light of our resolution of the issue in part I of this opinion, which leads us to remand the case for further proceedings. We have addressed the present claim to clarify, for purposes of those further proceedings, that this court's prior remand order did not preclude an evidentiary hearing. Because the present case will be remanded to a different habeas court judge for further proceedings related to the issue of prejudice under *Strickland*, we anticipate that a hearing will be conducted during which the petitioner will be afforded an opportunity to present evidence with respect to the issue of prejudice.

The judgment is reversed and the case is remanded to the habeas court for a hearing before a different judge for the purpose of determining the issue of prejudice in accordance with this opinion.

In this opinion the other judges concurred.

Exhibit #3

Branford, 58 Conn. App. 702, 710, 755 A.2d 317 (2000). The application of the exception to an identifiable class of victims has been exclusively reserved for schoolchildren attending public schools during school hours. See *Grady* v. *Somers*, 294 Conn. 324, 352–53, 984 A.2d 684 (2009). Outside of the public school context, the only Connecticut case we have identified wherein a specific plaintiff has been held potentially to be an identifiable person for purposes of the exception involved a discrete group of men involved in a brawl in a bar parking lot. See *Sestito* v. *Groton*, 178 Conn. 520, 522–23, 423 A.2d 165 (1979);[8] see also *Grady* v. *Somers*, supra, 353 (discussing restrictive application of exception).

In the present case, any number of potential victims could have come into contact with the dog following Petras' issuance of the restraint order. The exception cannot be construed so broadly as to apply to any person stepping foot onto Witham's property while the dog was present. See *Cotto* v. *Board of Education*, supra, 294 Conn. 279 ("[i]f the plaintiff was identifiable as a potential victim of a specific imminent harm, then so was every participant and supervisor in the Latino Youth program who used the bathroom").

We are likewise persuaded that the injuries suffered by the plaintiff do not qualify as imminent harm under the exception. "For [a] harm to be deemed imminent, the potential for harm must be sufficiently immediate." Id., 276. Here, Petras issued the restraint order on June 21, 2007, and the dog bite incident occurred nearly three years later, on June 15, 2010. The type of attack that

[8] The plaintiff argues that *Sestito* v. *Groton*, supra, 178 Conn. 520, is analogous to the present case. Our Supreme Court recently has explained that *Sestito* was decided before the current three-pronged identifiable person-imminent harm exception was adopted and its holding is limited to its facts, which are readily distinguishable from those alleged by the plaintiff. See *Edgerton* v. *Clinton*, supra, 311 Conn. 240.

caused the injuries suffered by the plaintiff "could have occurred at any future time or not at all." *Evon* v. *Andrews*, 211 Conn. 501, 508, 559 A.2d 1131 (1989) (rejecting application of exception to claims of negligent fire inspection by city officials). Accordingly, we conclude that the plaintiff in this case cannot avail herself of the identifiable person-imminent harm exception to discretionary act immunity.

The judgment is affirmed.

In this opinion the other judges concurred.

ALISON BARLOW *v.* COMMISSIONER OF CORRECTION
(AC 34925)

Beach, Bear and Sheldon, Js.*

Syllabus

The petitioner filed a third petition for a writ of habeas corpus, claiming, inter alia, that his trial counsel, M, had provided ineffective assistance. The habeas court rendered judgment dismissing in part and denying in part the habeas petition, and, thereafter, granted the petition for certification to appeal, and the petitioner appealed to this court. He claimed, inter alia, that the habeas court improperly applied the doctrine of deliberate bypass to his claim that M's assistance was ineffective with respect to a plea offer of the trial court, which was not accepted by the petitioner. *Held:*

1. The habeas court improperly raised the doctrine of deliberate bypass sua sponte, and, therefore, erred in dismissing the petitioner's claim concerning M on that basis, the respondent Commissioner of Correction not having claimed that the petitioner had procedurally defaulted or that the doctrine of deliberate bypass was applicable.
2. This court concluded that M rendered deficient performance to the petitioner by failing to advise him adequately concerning the trial court's plea offer, as M had an obligation to provide advice and assistance to the petitioner regarding the plea offer, which she failed to do; M testified that it was her practice never to recommend to a criminal defense client to accept or to reject a plea offer so as to avoid later claims of a coerced

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

plea, that she presented the court's plea offer to the petitioner without giving him any advice on that offer, and that she did not give the petitioner a professional assessment of the court's offer of nine years to serve in the context of the facts underlying the charges against him and his potential total sentence exposure of eighty-five years incarceration.

3. The petitioner could not prevail on his claim that although the habeas court made no findings concerning prejudice, this court should presume prejudice on the basis of the record and order that the petition for a writ of habeas corpus be granted and that the court be ordered to give the petitioner the opportunity to plead guilty under the plea agreement he previously was offered by the trial court; because the habeas court was in the best position to determine whether it was reasonably likely that the petitioner would have accepted the court's offer had he received adequate advice from M, the case was remanded for further findings on the issue of whether the petitioner was prejudiced by M's deficient performance.

Argued February 6—officially released June 10, 2014

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *Sferrazza, J.*; judgment dismissing the first count of the petition and denying the second count of the petition, from which the petitioner, on the granting of certification, appealed to this court. *Reversed in part; further proceedings.*

Naomi T. Fetterman, assigned counsel, with whom, on the brief, was *Aaron J. Romano*, for the appellant (petitioner).

Mitchell S. Brody, senior assistant state's attorney, with whom, on the brief, were *Maureen Platt*, state's attorney, and *Eva B. Lenczewski*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

BEAR, J. The petitioner, Alison Barlow, appeals from the judgment of the habeas court dismissing in part and denying in part his third petition for a writ of habeas corpus. On appeal, the petitioner claims: (1) the court erred in denying his claim that counsel for his second habeas appeal, Christopher M. Neary, provided ineffective assistance by withdrawing the petitioner's claims of ineffective assistance of counsel concerning the petitioner's criminal trial attorney, Sheridan L. Moore; (2) the court erred in dismissing his claim that Moore had provided ineffective assistance by improperly concluding that the doctrine of deliberate bypass applied to bar that claim; (3) Moore rendered deficient performance during the petitioner's criminal proceedings by failing to advise the petitioner adequately regarding the court's plea offer; and (4) although the habeas court made no findings concerning prejudice, we should presume prejudice on the basis of the record and order that the petition for a writ of habeas corpus be granted and that the court be ordered to give the petitioner the opportunity to plead guilty under the plea agreement he previously was offered by the trial court. We agree with the petitioner's second and third claims, and, on this basis, conclude that it is unnecessary to consider his first claim. We do not agree with his fourth claim, however, and thus conclude that the case must be remanded to the habeas court for further findings on the issue of prejudice.[1] Accordingly, the judgment is reversed in part, and the case is remanded to the habeas court.

The record reveals the following relevant facts and procedural history. The petitioner had been charged with several serious crimes, including attempt to commit murder and conspiracy to commit murder. He was offered a "one time" plea deal by the court that included a sentence of nine years to serve. The petitioner instead wanted a deal that would require him to serve only six

[1] Because we conclude that the court improperly, sua sponte, raised the issue of deliberate bypass and that the petitioner proved in the habeas court that Moore's performance was deficient concerning the plea offer, we also conclude that we need not consider the issue of whether Neary's performance was deficient for failing to pursue the issue of Moore's performance.

years incarceration. The court informed him that the deal it offered was good for one day only, after which his case would be placed on the trial list. The petitioner did not accept the court's offer at that time. The offer, however, ultimately remained in effect for approximately one year before it was withdrawn. The petitioner was tried by a jury and found guilty of the charges. He was given a total effective sentence of thirty-five years incarceration.[2] His conviction was upheld on appeal. See *State* v. *Barlow*, 70 Conn. App. 232, 797 A.2d 605, cert. denied, 261 Conn. 929, 806 A.2d 1067 (2002).

In his first habeas petition, the petitioner, initially acting in a self-represented capacity, alleged that his trial counsel, Moore, was ineffective, inter alia, in failing to counsel him fully regarding the time limitation on the availability of the trial court's plea offer. His appointed counsel, Peter Tsimbidaros, then amended the first habeas petition and withdrew the ineffective assistance claim concerning Moore. The first habeas petition was not successful.

The petitioner, again initially acting in a self-represented capacity, filed a second habeas petition alleging that Moore had been ineffective, and that Tsimbidaros had been ineffective by withdrawing the claim concerning Moore from the first habeas petition. Appointed counsel, Neary, then filed an amended petition, withdrawing those claims. This second habeas petition was denied, and the habeas court, thereafter, denied the petition for certification to appeal. We dismissed the petitioner's appeal from that judgment after concluding that the court did not abuse its discretion in denying

[2] The petitioner was convicted of attempt to commit murder in violation of General Statutes §§ 53a-49 (a) (2) and 53a-54a, conspiracy to commit murder in violation of General Statutes §§ 53a-48 (a) and 53a-54a, two counts of assault in the first degree in violation of General Statutes § 53a-59 (a) (1), and alteration of a firearm identification number in violation of General Statutes § 29-36.

the petition for certification to appeal. See *Barlow* v. *Commissioner of Correction*, 131 Conn. App. 90, 26 A.3d 123, cert. denied, 302 Conn. 937, 28 A.3d 989 (2011).

The present appeal concerns the petitioner's third habeas petition. In it, he alleges that Moore was ineffective, and that Neary was ineffective in amending the second habeas petition to withdraw his ineffective assistance claims concerning Tsimbidaros and Moore. The habeas court determined that the petitioner's first claim, which was based on the alleged ineffective assistance of Moore, had been deliberately bypassed, and, therefore, the court dismissed the first count of the petition. As to the second count, the court determined that the petitioner failed to prove that Neary had been ineffective by withdrawing the claims concerning Tsimbidaros and Moore. In considering the claim concerning Neary, however, the court necessarily examined whether there was merit to the petitioner's claim that Moore had been ineffective. The court specifically found that "Moore fully apprised the petitioner as to the terms of the plea offer, including its temporary nature, the strengths and weaknesses of the prosecution and defense cases, and the possible outcomes after trial." It also found that "Neary averred that he examined Moore's performance for the petitioner's defense and found no basis for such an ineffective assistance claim [concerning] her." The court concluded that the petitioner had failed to prove that "Moore was deficient in any of the ways alleged . . . [or] that Attorney Neary or Attorney Tsimbidaros rendered ineffective assistance by withdrawing the claims [concerning] Moore . . . ." Accordingly, the court denied the petition as to the second count. The court granted certification to appeal, and this appeal followed.

I

We first consider the petitioner's claim that the court improperly applied the doctrine of deliberate bypass to

his claim that Moore's assistance was ineffective with respect to the court's plea offer. He argues that the doctrine of deliberate bypass does not apply to ineffective assistance of counsel claims in habeas proceedings, but that it applies only to claims that should have been raised on direct appeal but were deliberately bypassed. He further argues that the respondent, the Commissioner of Correction, never raised this claim before the habeas court and that our case law has established that the deliberate bypass doctrine automatically becomes inapplicable when a claim of ineffective assistance of counsel is raised. The respondent argues that the doctrine applies in this instance because the petitioner knowingly and voluntarily declined to pursue his claim concerning Moore by permitting Neary to withdraw that claim.[3] The respondent also argued during appellate oral argument that, although it neither raised nor argued the doctrine of deliberate bypass before the habeas court, the court was within its authority to raise the doctrine sua sponte. We need not decide whether the doctrine *could apply* in this instance because we conclude that the court improperly raised the doctrine sua sponte.[4]

Practice Book § 23-30 (b) provides, in relevant part, that the respondent's return "*shall allege* any facts in support of any claim of procedural default, abuse of the writ, or any other claim that the petitioner is not entitled to relief." (Emphasis added.) In *Fine* v. *Commissioner of Correction*, 147 Conn. App. 136, 141, 81

[3] We note that the petitioner argues in his reply brief that he did not knowingly and voluntarily decline to pursue this claim and that this is demonstrated by Neary's testimony that he specifically told the petitioner that such claims could be raised in a later habeas proceeding.

[4] We offer no opinion on the status of the doctrine of deliberate bypass in habeas proceedings alleging ineffective assistance of counsel, but we note that our Supreme Court has most recently discussed that issue in *Crawford* v. *Commissioner of Correction*, 294 Conn. 165, 180–90, 982 A.2d 620 (2009).

A.3d 1209 (2013), we recently explained that the doctrine of deliberate bypass "historically has arisen in the context of habeas petitions involving claims procedurally defaulted at trial and on appeal. See *Crawford* v. *Commissioner of Correction*, 294 Conn. 165, 186, 982 A.2d 620 (2009) (observing that since *Jackson* v. *Commissioner of Correction*, 227 Conn. 124, 132, 629 A.2d 413 [1993], our Supreme Court 'consistently and broadly has applied the cause and prejudice standard to trial level and appellate level procedural defaults in habeas corpus petitions')."

"If the respondent claims that the petitioner should have raised the issue [previously] . . . the claim [of procedural default] *must be raised in the return or it will not be considered at the* [*habeas*] *hearing*." (Emphasis added.) W. Horton & K. Knox, 1 Connecticut Practice Series: Connecticut Superior Court Civil Rules (2013–2014 Ed.) Rule 23-30, official comments, p. 1031. "[T]he plain language of Practice Book § 23-30 (b) requires the [respondent] to plead procedural default in [the] return or [the respondent] will relinquish the right to assert the defense thereafter. . . . [I]n Connecticut, although the petitioner has the burden of proving cause and prejudice . . . that burden does not arise until after the respondent raises the claim of procedural default in [the] return. . . . Because the respondent did not plead procedural default as an affirmative defense . . . the court could not find that the petitioner was procedurally defaulted . . . ." (Citation omitted; internal quotation marks omitted.) *Ankerman* v. *Commissioner of Correction*, 104 Conn. App. 649, 654–55, 935 A.2d 208 (2007), cert. denied, 285 Conn. 916, 943 A.2d 474 (2008); see *Milner* v. *Commissioner of Correction*, 63 Conn. App. 726, 733, 779 A.2d 156 (2001) (supporting and applying position of federal habeas commentators that "petitioners generally need not raise waiver and procedural default matter in their

initial pleading and briefs, because the burden to raise and prove those defenses is on the [respondent]" [internal quotation marks omitted]).[5]

In the present case, the respondent did not claim in the return that the petitioner had procedurally defaulted (or that the doctrine of deliberate bypass was applicable). Accordingly, we conclude that the court improperly raised the doctrine of deliberate bypass sua sponte and, therefore, that it erred in dismissing the petitioner's claim concerning Moore on this basis.[6]

II

We next consider the petitioner's claim that Moore rendered ineffective assistance of counsel during the petitioner's criminal proceedings. The petitioner argues in relevant part that Moore's "decision not to advise [the petitioner], or any of her clients, with respect to plea offers was motivated by her desire to avoid habeas and grievance actions in which clients could claim that they were coerced into pleading guilty. . . . This blanket strategy was in no way formulated to benefit [the petitioner], and, to the contrary, her self-imposed protective mechanism put [her] interests in conflict with those of [the petitioner], who, as a defendant exercising his right to counsel under the sixth amendment to the United States constitution . . . expects to be counseled . . . ." (Citation omitted.) The respondent contends that Moore adequately advised the petitioner and

[5] Reasonable prior written notice of and the opportunity to be heard concerning a claim or defense are fundamental aspects of procedural due process. See, e.g., *Connolly* v. *Connolly*, 191 Conn. 468, 475, 464 A.2d 837 (1983) ("[t]he purpose of requiring written motions is not only the orderly administration of justice; see *Malone* v. *Steinberg*, 138 Conn. 718, 721, 89 A.2d 213 [1952]; but the fundamental requirement of due process of law. *Winick* v. *Winick*, [153 Conn. 294, 299, 216 A.2d 185 (1965)]").

[6] Although the court dismissed the petition as it related to the ineffective assistance claim concerning Moore, it nonetheless examined whether Moore was ineffective when it reviewed the petitioner's claims concerning former habeas counsel, which alleged that they were ineffective for failing to pursue ineffective assistance claims concerning Moore.

that she was not required to tell him whether to take the plea. The respondent further argues that, although *Vazquez* v. *Commissioner of Correction*, 123 Conn. App. 424, 437–38, 1 A.3d 1242 (2010), cert. denied, 302 Conn. 901, 23 A.3d 1241 (2011), holds that specific recommendations may be required in certain situations, in the current case, where Moore represented the petitioner in 1997-98—long before *Vazquez* was decided—her competency should be measured against the benchmark of competence at that time and not "under current standards."[7] We agree with the petitioner that Moore

[7] The respondent's contention that in *Vazquez* we announced a new standard for counsel during plea negotiations has no merit. A similar argument was made before the United States Court of Appeals for the Second Circuit in *Roccisano* v. *Menifee*, 293 F.3d 51, 59 (2d Cir. 2002), when the petitioner in that case argued that he could not have raised his claim that counsel did not adequately advise him previously because the court had not yet decided *Boria* v. *Keane*, 99 F.3d 492 (2d Cir. 1996), cert. denied, 521 U.S. 1118, 117 S. Ct. 2508, 138 L. Ed. 2d 1012 (1997). Specifically, the court explained: "Roccisano's contention that he could not assert his present claim until he learned of our decision in *Boria* is meritless, however, for the principle applied in *Boria*, i.e., that the right to effective assistance of counsel encompasses the accused's right to be informed by his attorney as to the relative merits of pleading guilty and proceeding to trial, was hardly novel, having been articulated clearly by the Supreme Court nearly a half-century earlier, see *Von Moltke* v. *Gillies*, 332 U.S. 708, 721, 68 S. Ct. 316, 92 L. Ed. 309 (1948) ([p]rior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered).

"In *Boria*, we applied this principle in holding that an attorney had rendered constitutionally deficient assistance to the defendant by failing to discuss with him the advisability of accepting or rejecting a proffered plea bargain that would have resulted in a prison term of one-to-three years, where the attorney felt it would be suicidal to go to trial and the defendant, after going to trial, received a sentence of [twenty] years to life. See [*Boria* v. *Keane*, supra, 99 F.3d 494–95]. We noted that although our own Court had not previously been called upon to articulate the rule that an accused is entitled to receive such advice, our holding was based principally on the standards for claims of ineffective assistance of counsel set out more than a decade earlier in *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and on well established principles set forth in American Bar Association (ABA) guidelines. While the Second Circuit may not have spoken, the *Strickland* Court has indicated how the question should

rendered deficient performance to the petitioner concerning the plea offer.

We begin with the applicable standard of appellate review and the law governing ineffective assistance of counsel claims. "The habeas court is afforded broad discretion in making its factual findings, and those findings will not be disturbed unless they are clearly erroneous. . . . The application of the habeas court's factual findings to the pertinent legal standard, however, presents a mixed question of law and fact, which is subject to plenary review. . . . *Sastrom* v. *Mullaney*, 286 Conn. 655, 661, 945 A.2d 442 (2008).

"A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . As we have noted previously, however, when a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, and the credibility of witnesses is not the primary issue, our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence. . . . [W]here the legal conclusions of the court are challenged, [our review is plenary, and] we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision . . . . *State* v. *Mullins*, 288 Conn. 345, 362–63, 952 A.2d 784 (2008)." (Internal quotation marks omitted.) *State* v. *DeMarco*, 311 Conn. 510, 519–20, 88 A.3d 491 (2014); id., 520 (if credible witness' "own testimony as to what occurred is internally consistent and uncontested by the defendant but, in fact, undercuts the trial court's ruling in favor of the state, a reviewing court would be remiss in failing to consider it").[8]

be resolved. Just before starting its discussion of the merits, it observed that it had granted certiorari to consider the standards by which to judge a contention that the Constitution requires that a criminal judgment be overturned because of the actual ineffective assistance of counsel. [Id.] 684 . . . . Later it pointed to [p]revailing norms of practice as reflected in American Bar Association standards as guides to determining what is reasonable. Id. [688] . . . .

"The American Bar Association's standard on the precise question before us is simply stated in its Model Code of Professional Responsibility, Ethical Consideration 7-7 (1992): A defense lawyer in a criminal case has the duty to advise his client fully on *whether a particular plea to a charge appears to be desirable*. . . . *Boria* [v. *Keane*, supra, 99 F.3d] 496 . . . .

"Further, as recognized in *Boria*, the principle articulated by the Supreme Court in *Von Moltke* in 1948 had been reiterated decades prior to *Boria* by other circuit courts of appeals in *Walker* v. *Caldwell*, 476 F.2d 213, 224 (5th Cir. 1973), and *Jones* v. *Cunningham*, 313 F.2d 347, 353 (4th Cir.), cert. denied, 375 U.S. 832, 84 S. Ct. 42, 11 L. Ed. 2d 63 (1963), and by the district court in which Roccisano was convicted and filed his 1991 and 1995 Motions, see *Boria* [v. *Keane*, supra, 99 F.3d] 497 ([i]n *United States* v. *Villar*, 416 F. Supp. 887, 889 [S.D.N.Y. 1976], Judge Motley . . . made the following observation about effective assistance of counsel: Effective assistance of counsel includes counsel's informed opinion as to what pleas should be entered).

"In sum, the principle that defense counsel in a criminal case must advise his client of the merits of the government's case, of what plea counsel recommends, and of the likely results of a trial, was established long before Roccisano was even prosecuted. Roccisano plainly was aware of the factual basis for his present claim, knowing what counsel's advice to him had been. The fact that *Boria* had not yet been decided gave him no excuse for not raising his present claim at least as early as his first [motion pursuant to 28 U.S.C. § 2255]." (Citations omitted; emphasis altered; internal quotation marks omitted.) *Roccisano* v. *Menifee*, supra, 293 F.3d 59–60.

[8] We find the language of *State* v. *DeMarco*, supra, 311 Conn. 520, to be instructive: "[I]f, upon examination of the testimonial record, the reviewing court discovers but one version of the relevant events upon which both the state and the defendant agree, and such agreement exists both at trial and on appeal, the reviewing court may rely on that version of events in evaluating the propriety of the trial court's determinations and determining whether the trial court's factual findings are supported by substantial evidence. In a case where the trial court has concluded that the police action at issue was justified and the undisputed version of events reflected in the transcript was adduced by the state through testimony of the police officers, a reviewing court's reliance on that version of events is particularly appropriate. If the officers' own testimony as to what occurred is internally consistent and uncontested by the defendant but, in fact, undercuts the trial court's ruling in favor of the state, a reviewing court would be remiss in failing to consider it."

Our Supreme Court in *DeMarco* was careful to insert a footnote stressing that the finder of fact is free to credit parts of a witness' testimony and to

"A criminal defendant is constitutionally entitled to adequate and effective assistance of counsel at all critical stages of criminal proceedings. . . . This right arises under the sixth and fourteenth amendments to the United States constitution and article first, § 8, of the Connecticut constitution. . . . It is axiomatic that the right to counsel is the right to the effective assistance of counsel." (Citations omitted; internal quotation marks omitted.) *Mozell* v. *Commissioner of Correction*, 291 Conn. 62, 77, 967 A.2d 41 (2009). The United States Supreme Court, long before its recent decisions in *Missouri* v. *Frye*, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012), and *Lafler* v. *Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012), recognized that the two part test articulated in *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), applies to ineffective assistance of counsel claims arising out of the plea negotiation stage. *Hill* v. *Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); see also *Missouri* v. *Frye*, supra, 140 ("*Hill* established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in *Strickland*").

"Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas. . . . The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have

reject other parts. See id., 520 n.4. That specific limitation leads us to believe that the broad review approved in *DeMarco* is to be used sparingly and only where the overall thrust of a witness' testimony, relied upon by both parties, is clear and unequivocal.

We believe that Moore's testimony in the present case falls into that narrow category. Her testimony, which we have carefully reviewed, was clear and unequivocal. It was relied on by both sides, and credited by all parties and by the habeas court. We conclude, then, that the circumstances of the present case fit within the narrow exception recognized in *DeMarco*, and that we may rely on facts apparent from Moore's testimony, even though not expressly found by the habeas court.

responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours is for the most part a system of pleas, not a system of trials . . . it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. To a large extent . . . horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it is the criminal justice system. . . . In today's criminal justice system, therefore, the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.

"To note the prevalence of plea bargaining is not to criticize it. The potential to conserve valuable prosecutorial resources and for defendants to admit their crimes and receive more favorable terms at sentencing means that a plea agreement can benefit both parties. In order that these benefits can be realized, however, criminal defendants require effective counsel during plea negotiations. Anything less . . . might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him." (Citations omitted; internal quotation marks omitted.) *Missouri* v. *Frye*, supra, 132 S. Ct. 1407–1408; see also *Gonzalez* v. *Commissioner of Correction*, 308 Conn. 463, 478–79, 68 A.3d 624, cert. denied sub nom. *Dzurenda* v. *Gonzalez*, U.S. , 134 S. Ct. 639, 187 L. Ed. 2d 445 (2013).

Under the two part *Strickland* test, a petitioner asserting a claim of ineffective assistance of counsel must demonstrate both deficient performance and prejudice. *Ledbetter* v. *Commissioner of Correction*, 275 Conn. 451, 460, 880 A.2d 160 (2005), cert. denied sub

nom. *Ledbetter* v. *Lantz*, 546 U.S. 1187, 126 S. Ct. 1368, 164 L. Ed. 2d 77 (2006). The petitioner will meet his burden by establishing that counsel's performance "fell below an objective standard of reasonableness"; *Strickland* v. *Washington*, supra, 466 U.S. 688; and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., 694. Where, as here, a petitioner rejects a plea offer, he must establish that "but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." *Lafler* v. *Cooper*, supra, 566 U.S. 164; see also *Missouri* v. *Frye*, supra, 566 U.S. 147.

When considering whether Moore's performance was deficient for failing to advise and assist the petitioner concerning the court's plea offer, the habeas court explained: "Moore acknowledged that it was her practice never to recommend to a criminal defense client to accept or reject a plea offer. She abstained from doing so to avoid later claims of a coerced plea. In particular, she made no recommendation to the petitioner as to whether to accept or reject the nine year offer. The question arises as to whether a practice eschewing such a recommendation comports with effective representation.

"There is no per se requirement obligating defense counsel to make such a recommendation. *Edwards* v. *Commissioner of Correction*, 87 Conn. App. 517, 524–25, [865 A.2d 1231] (2005); *Vazquez* v. *Commissioner of Correction*, [supra, 123 Conn. App. 437–40]; *Purdy* v. *United States*, 208 F.3d 41, 48 (2d Cir. 2000). 'Counsel's conclusion as to how best to advise a client in order to avoid, on the one hand, failing to give advice and, on the other, coercing a plea enjoys a wide range of reasonableness . . . .' *Vazquez* v. *Commissioner of Correction*, supra, 438. The need for recommendation depends on 'countless' factors, such as 'the defendant's chances of prevailing at trial, the likely disparity in sentencing after a full trial as compared to a guilty plea . . . whether [the] defendant has maintained his innocence, and the defendant's comprehension of the various factors that will inform [the] plea decision.' Id.

"The court has found that Moore fully apprised the petitioner as to the terms of the plea offer, including its temporary nature, the strengths and weaknesses of the prosecution and defense cases, and the possible outcomes after trial. . . . [The court] also explained to the petitioner this information. The proof of the petitioner's guilt hinged on the believability of a coconspirator and circumstantial proof linking a weapon to the petitioner, that is, conviction was not a foregone conclusion.

"The cases which have found defense counsel wanting for failure to recommend acceptance of a plea offer have typically involved hopeless cases where going to trial was 'suicidal' and where the disparity between the plea offer and the potential sentence after trial was enormous. See., e.g., *Boria* v. *Keane*, 99 F.3d 492 (2d Cir. 1996) [cert. denied, 521 U.S. 1118, 117 S. Ct. 2508, 138 L. Ed. 2d 1012 (1997)]. The circumstances of the present case differ markedly from such a scenario."

The petitioner argues that the habeas court erred in rendering its decision because Moore testified during the habeas trial that she presented the court's plea offer to him without giving him *any advice* on that offer,

Inmate Request Form
Connecticut Department of Correction

CN 9601
REV 1/31/09

Inmate name: Michael Young | Inmate number: 232802

Facility/Unit: MacDougal | Housing unit: H1-36 | Date: 4-23-19

Submitted to: Counselor Tucker

Request: "MY SECOND REQUEST"

Due to the appearance of "NO CALL BACK" in "RESPONSE" to "MY VOICE" message "LEFT" 4-16-19 eliminating "ONE" of "TWO" provisional monthly "LEGAL" call "ENTITLEMENTS"... Would "YOU" now A.S.A.P. pre-organize "MY LEGAL" call contact to "SPEEK" directly with U.S. "SUPREME" Clerk Scott Harris as necessary "BEFORE" 4-26-19 at 202-479-3011 ???

Thank You
(Need this back for records)

continue on back if necessary

Previous action taken:

This request was recieved on 4/29/19

continue on back if necessary

Acted on by (print name): Tucker | Title: CC

Action taken and/or response:

I will make a one time exception to Schedule the Call for you. 4/29/19

Unfortunately Clerk Scott Harris Does not take Calls directly - And they Do not Schedule Calls So You will need to Call them Directly. 5/2/19

continue on back if necessary

Staff signature: | Date:

Ex. 6

Inmate Request Form
Connecticut Department of Correction

CN 9601
REV 1/31/09

Inmate name: Michael Young | Inmate number: 232802

Facility/Unit: MacDougal | Housing unit: H1-36 | Date: 4-26-19

Submitted to: Counselor Tucker

Request: ?? WHAT?? Has happen to "MY SECOND" monthly "LEGAL" call "REQUEST" dated 4-19-19 on "MY SECOND" dated 4-23-19, along with "YOUR" written "RESPONSES" as needed "BACK" for "MY RECORDS"... "SO"... "NOW"... In this "THIRD" I "STILL" need pre-organize call "CONTACT" to "SPEEK" directly to U.S. "SUPREME" Clerk Scott Harris as necessary on Tuesday 4-30-19!!!

Thank You
(Need this back for record)

continue on back if necessary

Previous action taken:

continue on back if necessary

Acted on by (print name): TUCKER | Title: CC

Action taken and/or response:

Inmates are not obligated to have calls pre-scheduled to the courts via the unit Counselor. I will attempt to schedule it on a one-time basis. If this not possible, you will be called out to make the call yourself.

continue on back if necessary

Staff signature: | Date:

ATTACH #7

Inmate Request Form

Connecticut Department of Correction

CN 9601
REV 1/31/09

Inmate name: Michael Young | Inmate number: 232802

Facility/Unit: MacDougal | Housing unit: H1-36 | Date: 4-22-19

Submitted to: Mailroom "NORTON"

Request: Today Monday 4-22-19 "MY LEGAL" mail 10X13 envelope was mailed to U.S. "SUPREME" Court, Scott Harris, 1 First street, N.E. Washington D.C. 20543... As such would "You" confirm in writting the "ACTUAL" date "THIS" goes "OUT" of the facility???

Thankyou

continue on back if necessary

Previous action taken:

continue on back if necessary

Acted on by (print name): | Title:

Action taken and/or response: NO RECORD, NOT IN MAILROOM.
4-18-19 TO ROCKVILLE SUPERIOR.

NORTON
4-24-19

continue on back if necessary

Staff signature: | Date:

Inmate Request Form

Connecticut Department of Correction

CN 9601
REV. 1/1/08

Inmate name: Michael Young | Inmate number: 232802

Facility/Unit: MacDougal | Housing Unit: H1-36 | Date: 4-25-19

Submitted to: Mailroom "NORTON"

Request: Today Thursday 4-25-19 through Counselor Tucker "MY LEGAL" mail 10X13 envelope was mailed to Scott Harris, U.S. "SUPREME" Court, 1 First Street, N.E. Washington D.C. 20543... As such would "YOU" confirm in writting the "ACTUAL" date it goes "OUT" of "THIS" facility ???

Thank you

continue on back if necessary

Previous action taken:

continue on back if necessary

Acted on by (print name): | Title:

Action taken and/or response:

4-26 19

NORTON

continue on back if necessary

Staff signature: | Date:

ATTACH # 8

Ex 8

Received
5-3-19

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 29, 2019

Mr. Michael A. Young
Prisoner ID #232802
MacDougal CI
4486 East Street South
Suffield, CT 06080

Re: Michael A. Young
v. Carol Chapdelaine, Warden
No. 18-7321

Dear Mr. Young:

The Court today entered the following order in the above-entitled case:

The petition for rehearing is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

Ex 8

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Received
5-3-19

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 29, 2019

Mr. Michael A. Young
Prisoner ID #232802
MacDougal CI
4486 East Street South
Suffield, CT 06080

Re: Michael A. Young
v. Vernon Oliver, Judge, Superior Court of Connecticut, Tolland Judicial District, et al.
No. 18-8223

Dear Mr. Young:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

No. 18-8223

IN THE

SUPREME COURT OF THE UNITED STATES

Michael A. Young - PETITIONER

VS.

Vernon Oliver Et.Al. - RESPONDENT(S)

CERTIFICATION OF "IN PROPER PERSON" DECLARATION UNDER 18 U.S.C. §1621/28 U.S.C. §1746

I, Michael A. Young certify an declare under penalty of "PERJURY" that this forgoing petition in compliance with "SUPREME" Court "RULE 44" is "RESTRICTED" to "GROUNDS" specified under "SUPREME" Court "RULE 44.2", an is presented in "GOOD FAITH" and "NOT" for "ANY" further "DELAY" of "SUPREME" Court "FAIR" business practices!!!

Executed at MacDougal C.I. Suffield CT. on May-8th, 2019...

by MY "Factual Innocence"!!!
Michael A. Young Petitioner

No. 18-8223

IN THE

SUPREME COURT OF THE UNITED STATES

Michael A. Young —PETITIONER

VS.

Vernon Oliver Et. Al. —RESPONDENT(s)

PROOF OF SERVICE

I, Michael A. Young do swear or declare on May-8th, 2019 as required by "SUPREME" Court "RULE 29" I have "SERVED" the enclosed Motion for "LEAVE" to proceed in "FORMA PAUPERIS and Petition for "REHEARING" an immediate "SUSPENSION" of certiorari "DENIAL" on U.S. Solicitor General, Dept. of "JUSTICE", Room 5616, 950 Pennsylvania Ave, N.E. Washington D.C. 20530-0001, State of Connecticut Attorney General, William Tong, 55 Elm Street P.O. BOX 120, Hartford CT. 06141-0120... "AN"... The forgoing document (s) in this "ACTION" were mailed first-class postage prepaid on May-8th, 2019 placed in the institutions "LEGAL" mail system.

I declare under penalty of "PERJURY" that the forgoing is "TRUE" and "CORRECT"!!!

Executed at MacDougal CI. Suffield CT. on May-8th 2019.

by /M/ "Factual Innocence"!!!
Michael A. Young Petitioner

COURT

No. 18-8223

Immediate "RULE 44" Petition for "REHEARING" AN "EMERGENCY" "RULE 16.3" "SUSPENSION" of Certitorari "DENIAL"
IN THE

SUPREME COURT OF THE UNITED STATES

Michael A. Young — PETITIONER
(Your Name)

VS.

Vernon Oliver Et Al. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):
(1) U.S. District Court of Connecticut
(2) U.S. District Court for "SECOND CIRCUIT" Court of Appeals.

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

MY "Factual Innocence"!!!
(Signature)
Michael A. Young Petitioner

AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Michael A. Young, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ 0.00	$ N/A	$ 0.00	$ N/A
Self-employment	$ 0.00	$	$ 0.00	$
Income from real property (such as rental income)	$ 0.00	$	$ 0.00	$
Interest and dividends	$ 0.00	$	$ 0.00	$
Gifts	$ 0.00	$	$ 0.00	$
Alimony	$ 0.00	$	$ 0.00	$
Child Support	$ 0.00	$	$ 0.00	$
Retirement (such as social security, pensions, annuities, insurance)	$ 0.00	$	$ 0.00	$
Disability (such as social security, insurance payments)	$ 0.00	$	$ 0.00	$
Unemployment payments	$ 0.00	$	$ 0.00	$
Public-assistance (such as welfare)	$ 0.00	$	$ 0.00	$
Other (specify):	$ 0.00	$	$ 0.00	$
Total monthly income:	$ 0.00	$	$ 0.00	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	N/A	N/A	$ NONE
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ N/A
			$
			$

4. How much cash do you and your spouse have? $ NONE
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
NONE	$ NONE	$ N/A
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model NONE
Value N/A

☐ Motor Vehicle #2
Year, make & model NONE
Value N/A

☐ Other assets
Description NONE
Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ NONE	$ NONE
	$	$
	$	$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ N/A	$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	$	$
Home maintenance (repairs and upkeep)	$	$
Food	$	$
Clothing	$	$
Laundry and dry-cleaning	$	$
Medical and dental expenses	$	$

	You	Your spouse
Transportation (not including motor vehicle payments)	$ N/A	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$	$
Life	$	$
Health	$	$
Motor Vehicle	$	$
Other: _____	$	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$	$
Installment payments		
Motor Vehicle	$	$
Credit card(s)	$	$
Department store(s)	$	$
Other: _____	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify): _____	$	$
Total monthly expenses:	$	$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☒ Yes ☐ No

If yes, how much? $21,000.00

If yes, state the attorney's name, address, and telephone number:

Norman Pattis Esq.
Pattis "LAW" Firm
383 Orange Street, New Haven CT, 06511.

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☐ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Because have been "KIDNAPPED" for past 5½ "YEARS" and currently being "HELD" in "UNLAWFUL" restraint in "VIOLATION" of 8th amendment "NOT" be "SUBJECT" to "THIS CRULE" and "UNUSUAL" punishment!!!

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 3rd, 2019

MY "Factual Innocence" !!!
(Signature)
Michael A. Young Petitioner

U.S. SUPREME COURT

Michael A. Young
V.
Vernon Oliver Et. Al.

Case No.
18-8223
May 8th 2019

IMMEDIATE "RULE 44" PETITION FOR "REHEARING" AN "EMERGENCY "RULE 16.3" SUSPENSION" OF CERTITORARI "DENIAL"

THIS IS "CORRECT" ATTACH. #4 REPLACEMENT

Certification Under 28 USC § 1746

The undersign certifies under penalty of "PERJURY" that the forgoing "CORRECT" version with "HEAD NOTE" 3-29-19 date was in "FACT" included in "ALL" other certified "COPIES" sent to "ALL" other "PARTIES" to this "ACTION"... "SO"... The original "COURT" version was the "ONLY" mistated application!!!

Explicitly Submitted
by MAY "Factual Innocence"!!!
Michael A. Young Petitioner

The "SOLE SURVIVOR" of "SPECIAL SECRET" intelligence eliminating "ALL" forums of malicious "LAW"!!!

This "CORRECT" Attach #4 !!!

UNITED STATES "SUPREME" COURT "MY" mail "RULE 29.2" TIMELY 3-29-19 is "SAME" 3-20-19 filing !!!

HAEL A. YOUNG RULE 21/22 "COMPETENT" compliance CASE NO.

V. "SEE" Further declaration page #4 !!! 18-7321

CAROL CHAPDELAINE MARCH 3rd, 2019

MOTION FOR "EMERGENCY" RULE 36 "DECLARATION TO ENLARGEMENT ON PERSONAL RECOGNIZANCE PENDING "FINALITY"

"NOW"..Comes petitioner already with "GOOD" forgoing "CAUSE" explicitly "SHOWN" an "MOVES" this "HONORABLE" Court "SUPREME CHIEF" Justice "TRUTH BADER GINSBURG" under "RULE 36.3(a),(b) for "EMERGENCY" declaration to immediate "ENLARGEMENT" on "PERSONAL RECOGNIZANCE" pending "MY" "FINALITY" in above "ENTITLED" matter...In further support thereof as follows...

ERROR OF "FACTUAL" "LAW"

I. "CORRUPT" STATE COURT "REVIEW"

1. "YES"..As I "DENY" the "RIGHT" to remain "SILENT" the "PROPER" standard of "LEGAL" review here exceeds way "BEYOND" the constitutional "LIMITATIONS" of "OBSTRUCTIONIST" Oliver "MISCONDUCTED" Planko "MISAPPLICATION".."SEE" trial court 11-13-14 transcript 3:16-cv-1720(AWT)[Doc.20] "FOUND" at #1,#2.."YES"..In egregious "NON" compliance "THIS CASE" is much "MORE" consistant with state court "SUPREME AUTHORITY" confirmation set forth by State v.LaFleur 307 Conn.115...In that it "FAILS" to conform to "REQUIREMENTS" of "FEDERAL" constitutional "LAW" in light of "CHIEF" Justice "CHASE T. ROGERS" supervisory alignment "HOLDING" with "THIS" courts "CHIEF" Justice "ROBERT A.KATZMANN" panel "LAW OF CASE" in U.S.v.Dhinsa 243 F.3d 635...Consistant with "OTHER" circuit decisions "FOUND" in U.S.v.Vasques-Chan 978 F.2d 546:U.S.v.Spinney 65 F.3d 231:and U.S.v.Dinkane 17 F.3d 1192... "YES"..Making "PROPER" subject of the "VACATURE" approch that "MUST" provide immediate relief "RIGHTS NOW" with "NO" further "ACTUAL INJURY"!!!

ERROR OF "FACT" RENDERING JUDGMENT "VOID"

II. "CORRUPT" STATE COURT JURY SELECTION

2. As "YOU" know I have been "DENIED" access to "ALL" meaningful jury selection transcripts,audio recordings,and "MY RIGHTS" to "ANY" disclosure as "NECESSARY" for "PROPER" preparation and presentation of "MY" motion challenging this "ILLEGAL" selection procedure "ALL" in "VIOLATION" of 28 USC.§1867(f).."SO"..Just recently mid-January 2017 over 3 years latter I "FINALLY" obtained "ONLY" LIMITED "transcribed access to[T:8-14-13/8-15-13] "SEE" 3:16-cv-1720(AWT)[Doc.20] "AGAIN" at #1,#2...Also worth "NOTING"..Simultaneous with "MY" 2-23-17 state court "ILLEGAL" jury selection challenge an "OBSTRUCTIONIST" Oliver "DISCARDED" filing 3:16-cv-1720(AWT)[Doc.21]at #1 "SEE" [EXHIBIT 7]...Here "ALL" (AWT) pleding "DENIALS" with "PREMATURE" case "DISMISSALS" were "ALL" entered upon the docket in a 2-23-17 after hours "PARTY"..3:16-cv-1720(AWT)[Doc.14],..3:16-cv-1744(AWT) and 3:16-cv-1798(AWT)[Doc.13]!!!